

THE  
COUNTRY JUSTICE:  
Containing the Practice of the  
Justices of the Peace  
Out of their  
SESSIONS.

Gathered for the better help of such Justices of Peace,  
as have not been much conversant in the Study of the LAWS  
of this REALM.

By MICHAEL DALTON of Lincolns-Inn, Esq;  
and One of the Masters in Chancery.

To which is now added,  
The Duty and Power of Justices of Peace in their  
Sessions;

An Abridgment (under proper Titles) of all Statutes,  
relating thereunto.

A large TABLE of the Principal Matters herein  
contained.

With two other TABLES, One of the CHAPTERS in this  
BOOK; and the other of such ACTS of Parliament, as concern  
the Office of a Justice of Peace.

*Justice is the Staff of Peace, and the Maintenance of Honor. Cic.*

L O N D O N :

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To the Right Honourable,  
**HENRY MOUNTAGUE, K<sup>t</sup>.**

Lord Chief Justice of the Pleas, holden before  
 the **KING'S MAJESTY.**

My Honourable good Lord,  
**A**fter I had spent many Years in the Study of the Laws of  
 this Realm, and was called to the Ministration of Justice  
 in my Country, I thought it not sufficient to apply my  
 self only to the Precepts and Directions of former times, but  
 withal to observe such new Accidents as daily happened within  
 my own Experience, whereby the better to perform the Duties of  
 my Place. Whilst I thus endeavoured my self, I observed  
 that Justices of Peace in their Places grew in neglect, and many  
 times were over-swayed by Superiour Sollicitations, yea, and  
 sometimes disgraced, in such sort, as I could have been con-  
 tent rather to have sat down in private quiet, then with Care,  
 Study and Pains to incur such Hazards and Discontentments.  
 But again, whilst I stood thus doubtful, it pleased the Fountain  
 of Justice (I mean, His Royal Majesty) so to Countenance and  
 Grace, yea, to shew His Majesties high Esteem of His Autho-  
 rity of Justices of Peace, not only (in His Majesties late Speech  
 in the Star-Chamber,) prizing and valuing them with the  
 nearest employed about him, but (to the great Honour of  
 this Realm, and of the Government thereof) since also establish-  
 ing this Country Government by Justices of Peace in His Majesties  
 Native Country of Scotland; so as methought I saw the current  
 of Justice to run clear and comfortably through the Land, and  
 my self to receive new Vigour and Encouragement: whereupon  
 I began to recollect my confused Notes and Observations, willing,  
 for my private help and better readines, to digest them into some  
 Order and Method, such as my understanding could best Con-  
 trive. Thus prepared, I yet made question with my self, whether  
 it were better to adventure the publishing of these my Labours,  
 or to keep them by me only for my own private Use. In this  
 unsettled Consultation, being brought unto your Lordship by my  
 good Friend, (who also discovered to your Lordship this my  
 Labour) and finding your Lordship favourably to Respect me  
 and it, I took heart and encouragement to put the same in Print,

20 Junij Anno  
 1616.

## *The Epistle Dedicatory.*

after that I had obtained ( according to my humble Suit ) your Lordships favour for Allowance and Patronage thereof.

Now it remaineth farther, to crave of your Lordship, not only for my self, but for all that shall uprightly labour in this Justiciary course, that we may receive from your Lordship such Incouragement and Countenance, as that we may Couragiously and Constantly undergo the charge imposed upon Us, without fear of Oppositions, or other uncomfortable Disturbances. So by your Lordships favour and means shall Justice be the more duly Administred, and His Majesties Peace be the more firmly maintained, to the Honour and Safety of the Kings Majesty, and the good and peaceable Government of all his Subjects. And so His Majesty will no doubt proceed ( as he hath begun ) yet still to increase your Honour, for your care in honouring Him, and His Royal Throne thereby; and the People, who shall feel the goodness and benefit of your zeal of Justice, will heartily and joyfully pray for your Happiness; and God, beholding how you make Justice and Peace to go together, will, according to His abundant Mercies and infallible Truth, give you the everlasting reward of Justice and Peace. For all which I will continually pray, and besides, rest

*Your Lordships in all Humility*

*and Duty, ever to be commanded,*

**MICHAEL DALTON.**



To the Right Worshipful,

Sr. JAMES LEE, K<sup>t</sup>.

The Kings Majesties Attorney of His Court of Wards and Liveries; and to the Right Worshipful, and my very good Uncle, Thomas Spencer, Esq; and to the residue of my Masters of Lincolns-Inn.

**I**T may peradventure seem strange, that after so many Learned Writers in this kind, I (a man of so weak parts) should presume to offer to the View of the World a Work of this Nature: Yet my Reasons being considered with indifferent favour, I hope to be excused not only with you, but with all others that be lovers of their Country, and seek the Peace thereof. I confess my self a long, yet an unprofitable Member of your Honourable Society; but seeing that my Calling is to a Country life, and considering that he which is of the meanest condition, and that bath the smallest Talent, may not (without just Reprehension) retire himself so to his private Pleasure or Profit, as that he should neglect to shew some fruit and token of his love to his Country, (lest therein the Heathen Philosopher might justly condemn him, who said, Non solum nobis nati sumus, sed partim Patriæ, &c.) I have been the bolder, according to my Place, small power and capacity, to offer this my small Mite into the Treasury of my Country, this Work (whatsoever it be) being written first as private Notes for my particular helps in this business, wherewith my self and many others are daily employed and set on work, without yielding any Pleasure or Profit at all to us, otherwise than for the publick good.

The sweet of like labours you, my great Masters, (which I do most gladly behold) do from time to time reap more fully, rising daily to great Honour and Wealth, through your Wisdoms, Deserts, and great Pains. That which remaineth to us Country-Justices (for the most part) is the wearying of our selves, the spending of our time, Wits and Estates, ut alii inde pœe fruuntur, being requited manytimes not only with much evil will from or by the means of such as we have in Justice to deal withal, but oftentimes also rather disgraced then countenanced or encouraged by some in higher Place.

## The Epistle.

I speak not this without acknowledging it to be both just and meet, that the actions and proceedings of the Justices of Peace should be well and duly looked into, and themselves worthy to be punished, when through malice, or other corruption, they shall do unjustly: But if through unwilling ignorance they happen to err and do amiss, they are rather to be better informed then ill intreated. *Nemo nascitur sapiens, & humanum est errare.*

I am bold to write unto you, my worthy Masters and Worshipful Friends, and the rest of this Honourable Fellowship, knowing that there be many amongst you daily rising to great Places, whose Honour it will be to maintain the life of the Law and Justice of the Realm, with the excellency thereof, in causing due Execution thereof to be had and done; redressing the abuses and defects thereof, and encouraging such as shall carry themselves juste, fideliter, & sincere: Again, that there be many among you of great Learning and Judgment, by whom this my imperfect Work may, yea, and I hope shall be more polished and perfected. And seeing some others amongst you, whose Fortunes prove (as mine doth) to withdraw themselves into their Countries, I would gladly incourage them to imploy their better Talents to the common good.

I acknowledge there be divers other Books in this kind more Learned and Methodical; but withal I observe the business of the Justices of Peace to consist partly in things to be done by them out of their Sessions, (and sometimes privately, and peradventure upon the sudden, without the advice or association of any other) and partly at their Sessions of the Peace. Of things of this last kind I purpose not in this Treatise to meddle, for that at such publick Meetings and Assemblies they are far more able to direct themselves: but for the private and sudden help of such Justices of Peace, who peradventure have not read over the former Writers, and if they have, yet the multiplicity of Statutes (whereupon the Office and private Practice of Justices of Peace doth principally consist) is such, and at every Parliament so altered, by Expiration, Discontinuance, and otherwise, as that it is a Work very hard and laborious for Gentlemen not conversant in the study of the Laws (although otherwise very industrious) to proceed as by the Commission they ought and are prescribed, sc. secundum Leges & Statuta Regni; upon these considerations, and for their ease principally, I have published this Work; knowing that there be divers, both Honourable and Worthby Persons in the Country, some of whom for want of knowledge of the many particular Statutes in force, and tediousness of the study of them, do seek to be exempt out of the Commission of the Peace; others being in, do forbear to meddle,

or

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## The Epistle.

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or meddling do not that good service therein which they are desirous to do. I have herein endeavoured to set down things so plainly and briefly as I could, with reference to the Statutes abridged, whereby the Reader may the better resolve and satisfy himself what he ought to do in every particular almost that should come before him, or them, out of their General Sessions of the Peace. And yet for that in cases of Ambiguity, *Satius est fontes petere quam sectari rivulos*, I could wish all Justices of the Peace to have ready by them the Statutes at large, as well as the Abridgments, and to use this Book, or the Abridgments of the Statutes, as Tables and brief Memorials, but to trust and ground themselves upon the Books at large.

It resteth now only to intreat your favours: and although I might rest confident by the honourable Patronage I have obtained of him whose high Place and Presidency for matters of Justice and judicious understanding, drew me to covet the same, (and not a little besides induced, yea obliged thereto, in regard of the near alliance by Marriage into the Honourable House of the Spencers;) yet withal I could not out of that duty and love which I owe to this Honourable Society, (my first breeder in the studies of the Law) and hope of your tender respect, to uphold the Credit of an affectionate Member of your Society, but be bold also to crave your farther countenance in these my Labours; and that you would be pleased to accept this loving remembrance as a thankful gratuity to you, to whom I must ever acknowledge my self deeply obliged, and ever to rest at all your Commands,

MICHAEL DALTON.





# TO THE READER.

**I**T is a complaint, as antient as the Reign of *Henry* the Seventh; The Office of a Justice of Peace was a great burthen, in regard they were charged with the Execution of so many Statute Laws; whereas the Statutes touching Riots, Forcible Entries, Laborers and Liveries were then the greatest part of their work and business: More justly and reasonably may the Complaint be made at this day, when as the Execution of most Statutes is by expresse words made the duty of the Justice of Peace, and the Conviction of Offenders against the same put into the power and trust of one or two Justices of Peace, and that out of Sessions. A moderate deferring of things to their Cognizance by Statutes, is as ancient as their Constitution, which is thought not to go higher than the time of *Edward* the Third. And things then Cognizable by them, were for the most part determinable in their Sessions, and that by that antient and legal course of Indictment. But their being inabled to hear and determine, and punish upon View, or by Witnesses, or by Discretion, was rare and unusual, unless in case of Riots and Force, which threatned the Government, until the time of *Henry* the Seventh, in whose Reign it grew common first, and afterwards general; in the Eleventh year of whose Reign, was a Statute made for Justices of Peace, by information to hear and determine all offences against penal Statutes, except Treason, Murder and Felony: and what the effects were thereof, the very naming *Empson* and *Dudley* will suggest to any ones Memory, who is in any measure acquainted with the History of that Kings Reign; in the later part of whose Reign it grew common to intrust the Justices of Peace with such over great Authority; nay, at length they shared not only of the power, but the benefit too, by the Statute of the 19 H. 7. c. 11. They have not only power to Convict upon, and by Examination, such as offend in taking Deer and Herons, but are also to have a part of the forfeiture for their pains. Since the Reign of which wise, but covetous Prince, that absolute discretional, and extra-curial power hath been enlarged by many Statutes; the growth and increase of whose Authority both in and out of Sessions, you may at one view perceive in a Table, or Particular, prefixed to this Book of

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such

## To the R E A D E R.

such Statutes as are in their power to Execute by vertue of expresse words therein contained ; whereby in very many cases, in matters both of liberty and property, that fundamental course of accusation by Indictment found, and Conviction after Issue joyned by Verdict of Twelve Jurors, and of Judgment given in open Court on mature deliberation, concurrency of Opinion, and publick and solemn Determination thereof, are in a great measure abrogated ; and how far a delegation of such Authority may tend to the subversion of both liberty and property, by rendring useles the ancient way and method of Accusing, Convicting, Judging and punishing Offenders, 'tis not within my capacity to Discern, but others that can, may prevent it, if there be apprehended any danger from the same. The great Additions to the Justices of Peace , their Jurisdiction, first occasioned the Learned Author Mr. Dalton's Writing this Book, and because they when private, or but few were worst to help, he composed it for their aid, thereby declaring their Duty out of Sessions, which he hath done with singular pains, care, integrity and judgment.

But the Statutes still increasing their Authority, and the Learned Authors work proving very useful, many Editions of this Book have been, and on pretence of a further benefit hereby, some Additions with little care, and as little judgment have been made to it of later Statutes therein abridged, and of the spurious, and falsely so called Resolutions of the Judges, and some few other matters.

And now all former Editions of this Book, being either spent or not sufficing, there is attempted in this present Impression to make it further useful, not only an inserting under proper Titles the Statutes made since Mr. Daltons time Abridged, with some care and pains, in which Justices of Peace have to deal as well out of Sessions as in their Sessions ; as also wherewith the Justices had to do in their Sessions, before Mr. Dalton first published his Book, and with which he purposely medled not, it being not his proposed task ; as also some things touching their Sessions, and their proceedings therein.

'Tis especially provided for herein, that those Statutes that are either discontinued or repealed, may be through this Treatise taken notice of. I shall here insert the Statute, 17 Car. 2. cap. 4. by which, all Statutes and Acts of Parliament which had their continuance, or were by an Act made in the third year of King Charles the First, Intituled, *An Act for Continuance, and Repeal of divers Statutes, continued until the end of the first Session of the next Parliament, should by vertue of that Act, be adjudged*  
ever,



## To the R E A D E R.

ever since the Session of Parliament in the said third year, to have been of such force and effect, as the same were the last day of that Session; and from thenceforth, until some other Act of Parliament be made touching the continuance or discontinuance of the said Statutes and Acts in the said Acts so continued. Of which are 1 Eliz. 17. made perpetual, and the rest are Fifty seven in number, whereof

3 & 4 E. 6.	31 El. 1.	1 Jac. 31.
c. 21.	39 El. 4.	3 Jac. 9.
21 Jac. 22.	1 Jac. 25.	3 Jac. 10.
5 El. 5.	39 El. 2.	3 Jac. 11.
8 El. 10.	39 El. 17.	3 Jac. 13.
13 El. 21.	43 El. 2.	7 Jac. 1.
14 El. 5.	43 El. 3.	7 Jac. 4.
18 El. 3. &	43 El.	7 Jac. 11.
3 Car. 2. c. 4.	1 Jac. 25.	7 Jac. 13.
18 El. 20.	3 Car. 1. c. 4.	25 H. 8. 11.
3 & 4 E. 6.	1 Jac. 7.	21 Jac. 18.
10.	1 Jac. 22.	4 Jac. 2.
27 El. 14.	1 Jac. 27.	21 Jac. 20.
27 El. 24.	1 Jac. 6.	1 Car. 1. c. 1.

In all Forty Acts, do relate to the Justice of Peace his Authority, I thought convenient to mention them here, lest the Reader finding any of these Statutes to be at the first but Temporary, should not presently find how they stand continued, the said Clause of Continuance being put in the latter end of a Subsidy Act, where one would least look for it.

This present Impression of the Author, hath been all, at least once, much of it twice, compared with a former Edition of this Book, and in many places material corrected; and some part of what was added, obliterated and now omitted; what was let stand, is by this mark in the Margent ‘ differenced from the Author.

What is now added, is to do the Author further right, distinguishable from his Text, and from former Additions, by this mark “ in the Margent in most places.

The whole Book as formerly, is divided into Chapters, with the new Addition of Sections; but the number of the Chapters being now 196. whereas there were of the Authors but 134. There is carried on here in the Authors Chapters with the distinction of *V.* importing *Vetus*, or old Chapter.

## To the READER.

The Table is not only enlarged by near one half in Matter, and somewhat altered in Method; but also is made with References to the Chapter and Section, and will be of use, although in any after Edition the Pages should be altered.

The Additions to this new Edition are considerable, as will appear by the number of the Chapters herein increased beyond the Authors proper Edition; and would also appear by the Pages, if the same were no larger then the former.

The *Errata* of the Press may be many; but yet such as good Nature may forgive, and Care and Judgment easily discover and correct.

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**T**ouching the number of Chapters contained herein, take this *Advertisement*, That in the Enumeration of the same, in order to composing the Table at the end of this Book, there was one omitted, *viz.* the 70. So that where the Table refers to any Chapter, you must look in the Chapter following for what you seek for; as for instance, for any matter which you by the Table are referred to the 71 Chapter for; you must seek it in the 72. Which being observed, the Reader will not be disappointed in his search.

For

For the better use of this B o o k, and finding out of the Authors herein alledged, you must observe these short Directions hereunder following.

**F**Or *Fitz. Fitzherbert*. He was sometimes one of the Judges of the *Common Pleas*.

*Br. Brook*, sometimes Lord Chief Justice of the *Common Pleas*.

*Dyer*, late also Lord Chief Justice of the Court of *Common Pleas*.

*Dir.* Certain Directions or Resolutions of all the Judges of Assizes, *Anno 1633.* and Imprinted for *William Coke, An. 1636.*

*Co.* *Sir Edw. Coke*, Knight, late Lord Chief Justice of the *Kings Bench*, sc. *His Books of Reports*.

*Co. L. i.* *Sir Edw. Cokes* First Part of *Institutes, &c.* upon *Littleton*.

*Fi. M.* *Henry Finch*, *Apprentice del Ley*.

*Plow.* Master *Plowdens* Commentaries.

*Rast.* *Rastals* Abridgment of the Statutes, imprinted *Anno Dom. 1583.* He was sometimes one of the Judges of the *Common Pleas*.

*Lib. Intr.* The Book of Entries, Impres. 1596.

*Lbt. or Lambt.* Master *Lamberts* Justice of Peace, Impr. 1599.

*Crompt.* Master *Cromptons* Justice of Peace, Impr. 1606.

*P.* Master *Poultons* Abridgment of the Statutes, Impr. 1606.

*P. R.* Master *Poulton, de Pace Regis*.

*Ba.* *Sir Francis Bacon*, His Elements of the Common Law.

*Ba. V.* His Use of the Law.

‘Resolutions of the Judges of Assizes *Anno 1633.* to certain  
‘*Quæres*.

“*Jones Rep.* *Jones Reports*.

“*Bulstr.* *Bulstrode* his Reports, whereof are Three Parts.

“*Mo.* *Moores Reports*.

“*And.* *Andersons Reports*, Two Parts.



## CHAP. I.

*Of the Common Law, and of such as had, and still have, the Conservation of the Peace by the Common Law.*

## §. 1.

*a The Law of God is the Law of the Land: 34 H. 6. 40. Pril. Doct. & St. lib. 1. cap. 6. Fl. 3. Co. 340. b Common Law is common Reason Vide Flo. 35. a. 67. a. 107. b. & 465. a. Co. Li. 142. Co. 3. 8. & 9. Part. Preface, Forrelicue c. 17. Lit. 209.*

**T**HE Common Laws of this Realm of England, receiving principally their Grounds from the Laws of <sup>a</sup> God and Nature, (which Law of Nature, as it pertaineth to man, is also called the Law of <sup>b</sup> Reason) and being, for their Antiquity, those whereby this Realm was governed many hundred years before the Conquest; the Equity and Excellency whereof is such, as that there is no humane Law within the circuit of the whole World, by infinite degrees, so apt and profitable for the honourable, peaceable, and prosperous Government of this Kingdom, and so necessary for all Estates, and for all Causes, concerning Life, Lands or Goods, as these Laws be: These Laws, (I say) even from their beginning, have continued a special care for the Conservation of the Peace of this Land. And, to that purpose, at the Common Law (long before Justices of the Peace were made) there were sundry persons to whose charge the maintenance of this Peace was recommended, and who, with their other Offices, had (and yet still have) the Conservation of the Peace annexed to their charges, as a thing incident to and unseparable from their said Offices. And yet nevertheless they were and are called by the names of their Offices only, the Conservation of the Peace being included therein.

*Common Law.*

## §. 2.

*20 H. 7. 7. a Co. 11. 85.*

First, The King's Majesty (by his Dignity Royal) is the principal Conservator of the Peace within His Dominions, (and is *Capitalis Justiciarius Angliæ*) in whose hands at the beginning, the Administration of all Justice and all Jurisdiction in all causes first was; and afterwards by and from him only was this Authority derived and given to others.

*King.*

And yet so, as that whatsoever Power is by him committed over unto other men, the same nevertheless remaineth still in himself; insomuch that he may himself in person sit in Judgment, as in ancient times other Kings here have done, and may take knowledge of all cases and causes, unless they concern himself; for in such cases wherein the King is a party, the King cannot properly sit in Judgment, but must perform that by his Justices, Commissioners, or the like, as in cases of Treason, Felonies, or such other. The King also, as he is the principal Conservator of the Peace himself, so he may command all others, and may award Process against them to conserve the Peace; but he cannot take a Recognizance for the Peace, because the Recognizance is made to himself, &c.

## §. 3.

*Officers.*

The Lord Chancellor, (or Lord keeper of the Great Seal) the Lord High Steward of England, the Lord Marshal, and High Constable of England, the Lord Treasurer of England, and every Justice of the King's Bench, as also the Master of the Rolls, have inclosed in their said Offices the Conservation of the Peace over all the Realm; and every of these may award Precepts, and take Recognizances for the Peace, by virtue of their Places, and as incident to their Offices; yea, every one of these, upon prayer of Surety of the Peace made to them, or any of them, against another, hath authority to award or grant their Precept or warrant to the Sheriff, Con-

*Lamb. 12.*

stables, or other the King's Officers, for the arresting of the party, &c. and when he is come before them, may take Recognizance of him for the Peace. And if the party shall refuse to find such Surety, they may commit him to prison. And yet for the Master of the Rolls, it is held that he maketh Process and taketh Recognizance, not as incident to his Office, (as all the other may) but the Master of the Rolls his authority herein is said to be only by Prescription, that he hath used to make such Process, &c.

"The Chamberlain of *Chester* is Judge of the Court of Exchequer "there which hath the Jurisdiction of a Court of Chancery, and is by virtue "of this office a Conservator of the Peace there, as was amongst other "things certified by Sir *James Dyer*, and the Justices of the Court of the "Common Bench to Queen *Eliz.*

'But at this day these Conservators of the Peace are held to be out of 'use; and that their Authority for the keeping of the Peace is now only 'by virtue of the King's Commission of the Peace, ordaining them to be 'Justices of Peace. Sir *Fr. Bacon* his *use of the Law*, pag. 12.

§. 4.  
Judges.

There be others who (by virtue of their Offices) have the Conserva-  
tion of the Peace, but yet only within the precinct of their several Courts; as namely, the Justices of the Court of the Common Pleas, the Barons of the Exchequer, and the Justices of Assize and Gaol-delivery. And any person may pray and crave the Surety of the Peace before any of these in their Courts: and if the party be present, or within the place or precinct of their Court, or within their view, they may send the Warden of the Fleet, or other Officers attending their Court, to bring the party before them, and they may take Surety of him; and if he shall refuse to find such Surety, they may commit him to prison. See Sir *F. Bacon*, pag. 12.

Lamb. 13.  
2 H. 7. 2.  
Br. Peace  
12.

Also the Justices of Assize, if the Peace happen to be broken in their presence and Precinct of the Court, may command the Offender to the Gaol or Prison. And if complaint be made to them that *A.* is minded to break the Peace, or else if they do perceive the same in their presence; they may command the parties upon a certain pain to keep the Peace, 'and 'that Weapons be taken from the Jurors or Witnesses that appear before 'them. But as they be merely Justices of Assize, they may not award any Process or Warrant for the Peace, neither may they take Sureties of the Peace. Lamb. 13.

Stewards.

Also the Steward of the Sheriffs Turn, the Steward of a Leet, and the Steward of a Court of Pipowder, every of these are Conservators of the Peace within their several Courts; for every of them may commit him to ward that shall make an Affray in their presence whilst they be in Execution of their Offices; for that these be Courts of Record: and so in all other Courts of Record. But none of these may grant any Warrant for the Peace.

Lamb. 14.  
Br. Leet  
36.

13 H. 4. 12.  
21 E. 4. 21.

And the Steward of the Sheriffs Turn, as also the Steward of a Leet, (during their Courts) may by Recognizance bind him to the Peace that shall make an Affray in their presence, sitting the Court; and may commit him to ward until he hath found Surety for the Peace; and may also take the Examination of Felons, and commit them to the Gaol; and may also take the Presentment of any Felony at the Common Law, committed within their Precinct, or of any other offence against the Peace, except the Death of a man. See *Br. Leet* 1, 2, 14, 18, 22, 26.

Crom. 7.  
Br. Leet 39  
F.N.B. 82.

Co. 8. 38.

And so if any other Contempt or Disturbance to the Court shall be committed in any (of the said Courts, or in any other) Court of Record, the Judge (or Steward) there may impose upon such offenders a reasonable Fine. See *Br. Leet* 14, 36.

The

§. 5. The Sheriff, by the Common Law, is a principal Conservator of the *Sherif*  
 F.N.B. 81 Peace in every place within his County. And (upon request to him made)  
 d. & 82. he may command another to find Surety of the Peace, and may take the  
 Br. Peace same Surety by Recognizance, and that *ex Officio*, and without any Writ  
 13. of *Supplicavit* to him directed: 'and this seems to be by virtue of his  
 Lam. 186. 'Commission, which saith, *Commissimus vobis custodiam Comitatus, &c. Viñ.*  
*Br. Judges* 11. & *Recogn.* 5. 14. 16. & 18.

§. 6. Coroners also (by the Common Law) are Conservators of the Peace *Coroner*  
 Stamf. 48. within the County where they be Coroners: but they (as also all other  
 the Conservators of the Peace by the Common Law) have power for the  
 keeping of the Peace only as the Constables have at this day; 'to wit, they  
 'may take Surety for the Peace by Obligation. *Vide hic infra.* 3 E. 4. 9. &  
 '10 E. 4. & *tit. Forcible Entry, & Crompt.* 6.

§. 7. The High Constables of the Hundreds are Conservators of the Peace *Constables*  
 within their several Hundreds and Limits by the Common Law. *Crompt.* 6.  
 & 222. 12 H. 7. fol. 18.

And therefore these High Constables, at their petty Sessions, for any  
 Affray made in disturbance of their Court, may imprison the Offenders.  
*Co.* 11. 43. 44.

Every petty Constable within the limits of their several Towns are Con-  
 servators of the Peace (at the Common Law) by virtue of their Office.  
 Br. Peace 13. *Vide tit. Affray and Forcible Entry.*  
 Fi. 127.

And these petty Constables may do what they can to keep the Peace;  
 but they cannot take Surety of the Peace at the request of any man. 'And  
 'ex Officio they may cause such as in their presence are about to make an  
 'Affray, to find Sureties to keep the Peace; and that as well before the  
 'Affray, as after. *See Crompt.* 6. & 222. & 12 H. 7. fol. 18. a. & *hic postea.*

There be other Officers of much like Authority to our Constables: As  
 the Borsholders in *Kent*; the Thirdborough in *Warwickshire*; and the Tith-  
 ing-man, and Borowhead, or Headborough, or Chief pledge in other places.  
 But yet the Office of a Constable is distinct, and (as it seemeth) is of more  
 and greater Authority and respect than these other; as you may see by the  
 Statute of 39 *Eliz.* 4. where the Tithingman, or Headborough is to be  
 assisted in the punishment of Rogues, with the advice of the Minister, and  
 one other of the Parish, whereas the Constable alone of himself, as well  
 as the Justices of Peace may appoint or cause Rogues to be punished.

Lam. 51, And M. *Lambert* of the duty of Constables, pag. 51. &c. where he seem-  
 52, 53, 54, eth to hold that these Borsholders, Thirdboroughs, Tithing-men, Head-  
 55. boroughs, and other such, being in any Town or Parish where a Constable  
 is those other cannot meddle, because Constables be (in comparison of  
 them) head-Officers; and that the Tithing-men, &c. are but as Assistants  
 to the Constable in all Services of his Office when the Constable is present,  
 and in his absence, then these other to attend the Service; and that there  
 are many other things which the Constables may do, and wherewith the  
 Borsholders and the rest cannot meddle at all. And yet in Towns where  
 there be no Constables, and that the Borsholders, Thirdboroughs, Tithing-  
 men, Headboroughs, or such other, be there the only Officers for the Peace;  
 as also in such cases where the Power or Authority of the Borsholders, &c.  
 is declared to be equal with the Power of the Constable; in all such cases  
 and things their Office and Authority are in a manner all one. *See the Stat.*  
 1 *Jac.* cap. 7. & *Lambert Office del Const.* 4, 6, 9.

'There be also divers *Statutes* which do appoint Offenders to be punish-  
 'ed by the Constable or other inferiour Officer. Now who be these infe-  
 'riour Officers, if not the Tithing-men? &c.



Advice.

And now, for that these petty Constables be much absent from their Houses or homes, partly by reason of their employments in their Office, and partly by reason of their own private occasions, (especially in our and other like parts of the Land, where these Officers are for the most part Husbandmen, and so most part of the day in the fields;) it would prove very serviceable, if, by a Law to be made in Parliament, every Town and Village were to have a Tithing-man, or such other Officer, (or the like) to attend this service of the Constable, in his absence at the least, for that for want of such assistance, Rogues, Vagabonds, and the like, knowing their times, now travel up and down far more boldly.

‘And yet Mr. *Crompton*, fol. 222. saith, That a Constable may make a Deputy to execute his Office in his absence, for that he may be sick, &c. MoorsRep  
P. 845.  
‘But it hath been resolved, That he may make a Deputy, because it is but  
‘a Ministerial Office, *Mich. 13 Jac. B. R. Phillips and Winscome’s Case.*  
‘But some have held, That the making a Deputy is rather by Toleration  
‘than by Law. *Resol. 29.*

If any man shall make an Affray or Assault upon another in presence of the Constable or Borsholder, or if any man in the presence of the Constable shall threaten to kill, beat, or hurt another, or shall be in a fury ready to break the Peace; in every of these cases the Constable or Borsholder may commit the Offenders to the Stocks, or to some other safe custody for the present, (as his or their quality requireth) and after may carry them before some Justice of Peace, or to the Gaol) untill they shall find Surety for the Peace; which Surety the Constable himself may also take by Obligation, to be sealed and delivered to the King’s use: and if the party will not find such Surety to the Constable, he may imprison the party untill he shall do it. 3 H. 4. 9.  
F. 127.  
Hic cap. 2.

I have seen the Report of *Skarret’s Case*, *Termo. Trin. An. 35 Eliz. Rot. 1458.* where *Skarret* brought his Action of False Imprisonment against one *Hammer*, for arresting the Plaintiff and imprisoning him, &c. The Defendant, to the Imprisonment, pleaded, That he was High-Constable of the Hundred of *E.* in the County of *S.* and that the Plaintiff made an Affray within the said Hundred upon one *H. W.*, who presently came to him and told him thereof, and swore upon a Book that he was in fear of his life by the other; whereupon the Defendant came to the Plaintiff, and arrested and Imprisoned him untill he had found sufficient Sureties for the Peace; upon which the Plaintiff demurred. And it was adjudged, That the plea of the Defendant was insufficient; first, for that he was not present at the Assault and Affray; secondly, for that he was the High Constable of the Hundred, and not Constable of the Town. In the Argument of which Case, *Anderson*, Chief Justice, held Constables to be Conservators of the Peace at the Common Law, and still so to be, and that they ought to preserve the Peace as much as in them lieth; but that (said he) was by parting of men which he should see breaking of the Peace, &c. to carry them before a Justice of Peace, to find Sureties for the keeping thereof: but to take Sureties himself, the Constable cannot. And those which hold that he may take Surety, cannot tell what Surety that should be: for he cannot take a Recognizance nor Bail, for he is no Officer of Record; and if he shall take an Obligation, how the same shall be certified, and into what Court, he said he knew not; and that it should be very inconvenient to give such Authority to every Constable. But by three other Judges, namely, *Walmesley*, *Owen*, and *Bea- 10 E. 4.*  
*mond*, Although a Constable cannot take Surety for the Peace by Recogni- 18.  
zance nor Bail, yet he may take an Obligation, according to the Book of  
10 E. 4. And if the Affray be in their presence, they are Conservators of  
the

the Peace & therefore may use such means for keeping of the Peace by taking Surety by Obligation. And that before Justices of Peace were, the Peace was preserved, and that by the Constables. And that the *Statute* which ordained Justices of Peace, did not take away the Authority of the Constable. But the Constable hath no Authority to take an Oath of the party, that he is in fear, &c. Whereunto *Anderson*, Chief Justice, replied, saying, I doubt not but that at the Common Law the Peace was kept, but that was to be done in such manner as the Law appointed, and that is, by writ out of the Chancery or Kings Bench.

*Facon* V. 5. And yet I have seen another Authour supposed to be Sir *Thomas Egerton*, after Lord Chancellor, who writeth in these words: By the Common Law the Constable's Office was, to arrest the parties that had broken the Peace, or were (*in a fury*) ready to break the Peace; *sc.* if either he had seen it himself, or were truly informed thereof by others, or upon the Confession of the party who had freshly broken the Peace: And that all such Offenders the Constable might imprison in the Stocks, or in his own House, as the quality required, untill they had been bound by Obligation, with Sureties to the King, to keep the Peace from henceforth; which Obligation was to be sealed and delivered to the Constable to the use of the King; and the Constable was to send it into the Exchequer, or Chancery, from whence Process should be awarded to levy the Debt, if the Peace be broken. *Quod nota. Vide etiam Finch, fol. 127.* 'agreeing herewith, for such as the Constable findeth breaking the Peace.

§. 8. Every of these Conservators of the Peace are (by the ancient Common Law) to employ their own valour, and may also command the meet help, aid and force of others, to arrest and pacifie all such who in their presence and within their jurisdiction and limits, by word or deed, shall go about to break the Peace.

'Now these Conservators of the Peace are only to meddle with Affrays, Assaults, and Batteries, or Threatnings to break the Peace, done in their presence; but not with Riots, or Forcible Entries, or Detainers.

'And if a Conservator of the Peace, being required to see the Peace kept, shall be negligent therein, he may be indicted and fined for the same.

Also every of these Conservators of the Peace, if they have committed or bound over any such Offenders, it seemeth they are then only to send to, or to be present at, and attend the next Sessions of the Peace or Gaol-delivery, there to object against such Offenders.

But for the High Constables and Petty Constables, although they have (by the Common Law) the Charge of the Peace, as incident to their Office; yet it seemeth that their Offices and Authority began not long before the time that Justices of the Peace were ordained: (See here *titulo* Constable.) Whereas the Sheriffs, Coroners, Stewards of the Sheriffs Turn, of the Leet, and of the Court of Pipowders, and the Justices of all higher Courts, were long time before the Conquest. See *Co. 9. Part*, the Preface.

There were sundry other persons who (by the ancient Common Law) had the ordinary keeping of the Peace, and were named *Custodes pacis*; whereof some were by Election (in full County,) and some by Tenure, as you may see in *M. Lambert* 16, 17. There were others which were called to this Office by the King's Writ, to continue for the term of their lives, or at the King's pleasure; but these are now all ceased.

## The first Ordaining of Justices of the Peace. CHAP. II.

§. 1. **K**ING Edward the First (according to the first Article of the Sacred Oath received by him, and since by other Kings and Queens of this Realm at their several Coronations, the which is in these words, *Servabis Ecclesie Dei, Clero, & Populo, Pacem ex integro, & Concordiam in Deo secundum vires tuas. Quibus Rex respondit, Servabo*) in his first Parliament holden *An. 3.* of his Reign, *cap. 1.* hath established and commanded, that the Peace of holy Church and of the Land shall be well kept and maintained in all points: The which Peace of the Church is (and alwayes hath been by the ancient Laws of this Land) protected and conserved by the King, the Archbishops and Bishops of this Realm; and the Peace of the Land is, and alwayes hath been, defended and maintained by the same King, and his temporal Justices or Officers lawfully appointed for the same, &c. which temporal Justices, at the first, were the Conservators of the Peace, as aforesaid. But more especially in those times, there also were in every County continually Justices of Oyer and Determiner, and also there were Justices Itinerants, which had power not only to determine all manner of Quarrels, (as well real as personal) but also all Offences against the Peace, &c. as may appear in our Law-Books, and especially in *M. Fitz. tit. Corone*, amongst the *Iter North' & Canc'.*

See this  
Oath at  
large, Brac.  
lib. 3. and  
Dr. Cowel,  
235.

§. 2. For although by Chronicle Law, in our Annals, it is reported that *William the Conquerour* ordained Justices of the Peace about *An. Dom. 1070.* *Anno quarto* of his Reign; yet Justices of Peace had not their being almost Three hundred years after, *viz.* untill *An. Dom. 1327.* At which time Justices or Commissioners of the Peace were first created and ordained by the Stat. *1 Ed. 3. cap. 16.* By which Statute it was ordained, That in every Shire of the Realm certain persons should be assigned (*sc.* by the King's Commission) to keep the Peace. And their Authority was after enlarged by the Statutes *4 Ed. 3. cap. 2.* *18 Ed. 3. cap. 2.* & *34 Ed. 3. cap. 1.* And by many other Statutes made since in every King's Reign. And by the said Statute of *34 E. 3. 1.* were they first (generally) enabled to hear and determine (at the King's Suit) all manner of Felonies and Trespasses: And each County had now its proper Commissioners for the Peace, whereas before (it seemeth) the Commissions to the Justices of Peace were not alwayes made severally into each Shire, but sometime joyntly to sundry persons over sundry Shires.

Hollinsh.  
8.

Their be-  
ginning.

And by the Stat. *2 H. 5. cap. 1. Stat. 2.* Justices of Peace shall be made of the most sufficient persons dwelling in the same Counties, by the advice of the Chancellor and King's Council.

§. 3. But the Statute of *36 E. 3. cap. 12.* is the first statute that nameth them Justices of the Peace. For the Statutes of *2 E. 3. cap. 6.* and *25 Ed. 3. cap. 6. 7. 8.* speaking of Justices, seem not to be of our Justices of Peace; but that of *2 Ed. 3.* as also the Statute of *Winchester, cap. 6.* therein mentioned, to be meant of Justices Itinerants, or Justices in Eyre; and the other of *25 Ed. 3.* to be meant of Justices or Commissioners specially assigned for Servants and Labourers. See for this last, *Lamb. 24. & 577, 578.* and the Statutes of Labourers made *25 E. 3. cap. 6, 7, 8.* & of *42 Ed. 3. cap. 6. Rastal, fol. 233. a. b. d.*

Their  
Name.

They be called Justices [of the Peace] because they be Judges of Record, and withall to put them in mind (by their name) that they are to do Justice (which is, to yield to every Man his own by even portions, and accord-



cording to the Laws, Customs, and Statutes of this Realm,) without respect of persons. 'See 2 Chr. 19. 6, 7.

They are named also Commissioners [of the Peace,] because they have their Authority by the King's Commission.

"The name in Latine *Custodis pacis*, is equivalent to that of *Justiciarij pacis*, as was resolved p. 10. Jac. B. R. the King against Little. where upon a "Cerrorari, it was returned *quod ad general. &c. coram A. & B. custodibus pacis, Dom. Regis, &c.* an Indictment was found, and this taken for an exception that some were *Custodes pacis*, that were not *Justiciarij pacis*, yet the "exception was disallowed. *Rolls 2. &c. p. 95.*

§. 4. And here it shall not be amiss shortly to put our Justices of Peace in mind, how that Justice may be perverted many wayes, (if they shall not arm themselves with the Fear of God, the Love of Truth and Justice, and with the Authority and Knowledge of the Laws and Statutes of this Realm.) As namely,

1. By Fear; when fearing the power or countenance of another, they do not Justice. *Dent. 1. 17. Te shall not fear the face of man, for the judgment is Gods,* who is *Capitalis Justiciarius totius Mundi*, Chief Justice of Heaven and Earth, 'and they are his Lieutenants. <sup>2 Chr. 19. 6.</sup>

2. Favour; when they seek to please their Friend, Neighbour, or others, *Denter. ibid. Te shall have no respect of persons in Judgment. 'Thou shalt not favour the person of the poor, nor honour the person of the mighty, but shalt judge justly. Levit. 19. 15.*

3. Hatred or Malice against the party, or some of his. *Lev. 19. 18. 'Thou shalt not avenge, nor be mindful of wrong.*

4. Covetousness; when they receive or expect Fee, Gift or Reward: <sup>Ecc. 10. 18.</sup> for, as the Wise Man saith, *Rewards and gifts do blind the eyes of the wise, and make them dumb, that they cannot reprove faults.*

5. Perturbation of Mind; as Anger, or such like passion. *Jam. 1. 20. The wrath of man doth not accomplish the righteousness of God.*

6. Ignorance, or want of true Understanding what is to be done: *Ignorantia mater Erroris.*

7. Presumption; when without Law (or other sufficient Rule or Warrant) they (presuming of their own wits) proceed according to their own wills and affections. *There is more hope of a fool, than of him that is wise in his own conceit, Prov. 26. 12.*

8. Delay; which in effect is a denying of Justice. *Negligentia semper habet comitem infortunium, & mora trahit periculum.*

9. Precipitation, or too much Rashness; when they proceed hastily, without due examination and consideration of the fact, and of all material circumstances, or without hearing both parties: 'for the Law judgeth no man before it hear him, *John 7. 51.* And the Philosopher could say, *Qui aliquid statuerit, parte inaudita altera, Aequum licet statuerit, haud æquus est;* He that shall judge or determine of a matter, the one party being unheard, although he shall give just judgment, yet he is not a just Judge. And again, *Omnia non properanti clara certaque sunt, Festinatio autem semper improvida ac cæca est;* All things are plain and certain to him that is not rash nor heady, but Haste is alwayes improvident and blind. 'See *Dent. 17. 4. & Ecclesiasticus 11. 7, 8. & Prov. 18. 13.* <sup>Seneca.</sup>

His Majesty's Speech in the Star-Chamber, A. 1616.

All these 'King James his Majesty, of happy Memory, hath shortly, yet fully, observed in his Charge lately given to the Judges; sc. charging them, That they do Justice uprightly and indifferently, without delay, partiality, fear, or bribery, with stout and upright hearts, with clean and uncorrupt hands; and yet not to pitter their own conceits, but the true meaning of the Law; not making Laws,

Laws, but interpreting the Law, (and that according to the true sense thereof, and after deliberate consultation,) remembring that their Office is *jus dicere*, and not *jus dare*.

"According to this last also is the Rule given in the Book of Judges, *sc.* Jud. 19-3. "In all causes doubtful, first to consider of the matter, to consult, and then to give Sentence: 'Which Sentence must be agreeable to the merits of the Cause and Crime, else it is not equal.

"Yea, God himself hath given us Precedents of such deliberate proceedings: as you may see in *Genesis*, chap. 3. *vers.* 8. &c. & chap. 18. *Gen.* 3.<sup>8</sup>, 9, 11. *vers.* 21.

"These are worthy Directions for all Justices of Peace, 'and other Magistrates, "that they carry themselves in their places uprightly and indifferently, not uttering their own conceits, nor upon the sudden to overrule things; but after deliberate consideration and consultation, then to proceed to execute the Authority committed to them.

'Now there be four essential properties required in Magistrates and Justices, *viz.*

1. 'They must be men of Ability of Body and Estate, and of Courage for the Truth, and in the Truth.

2. 'They must be men fearing God; not seeking the place for Honour or Commodity, nor respecting persons, but the Cause.

3. 'They must be Men dealing truly, searching out all the Truth, and hating Covetousness.

4. 'They must judge the people at all seasons; using all diligence in hearing and ending Causes; and not to neglect the publick, for private imployments, or ease. See *Exodus* 18. 21, 22. & *Job* 29. 12, ad 17. For they bear not the sword in vain, *Rom.* 13. 4.

Justices of Peace are Judges of Record, appointed by the King to be Justices within certain Limits for the Conservation of the Peace, and for the execution of divers things comprehended within their Commission, and within divers *Statutes* committed to their charge. *Their Description or Definition.*

9 E. 4. 3.  
14 H. 8.  
16.

Now, first, that the Justices of Peace are Judges of Record, (yea, that every Justice of Peace by himself is a Judge of Record, and one upon whose sole Report and Testimony the Law reposeth it self very much) appeareth more plainly, if you observe these things following:

1. He is made under the Great Seal of *England*, which is a matter of Record.

2. Every Justice of Peace hath judicial power given unto him by the Commission, *sc.* in the first *Assignavimus*.

3. Also by some *Statutes* they have judicial power given them: for they may make a Record of a Force by them viewed, and may thereupon fine and imprison the Offenders; yea, one Justice of Peace in some cases, may also hear and determine Offences, and punish an Offender as convict upon his own View, or upon the Confession of the Offender, or upon Examination and Proof of Witnesses. *Vide Tit.* Forcible entry and hear determine.

L. 67. 94.  
14 H. 8.  
18.  
Co. 10. 76.

4. His Warrant (though it be beyond his Authority) is not disputable by the Constable, or other inferior Minister, but must be obeyed and executed by them. But this must be understood when the Justice of Peace hath Jurisdiction of the Cause for or concerning which he hath granted his Warrant; for otherwise the Constable, or other Officer executing their Warrant, seemeth to be punishable, notwithstanding the Justices Warrant. *Vid. tit. Warrants.*

Lam. 67.

5. He may take a Recognizance (for the Peace, &c.) which is a matter of Record, and which none can do but a Judge of Record. See *Br. Recog.* 8. & 14.

6. His

6. His Record (or Testimony) in some cases is of as great force as Indictment upon the Oath of twelve men, and in some other cases of greater force than an Indictment. See hereof *tit. Force, High-ways, Peace, and Riot.*

7. He also may make out Process upon Indictments, or Information against Offenders, &c. yea, and that out of their Sessions, (in some cases) as you may see hereafter, *tit. Process.*

Great cause therefore have the Justices of Peace to take heed that they abuse not this their credit and authority, either to the oppressing of the Subject, by making untrue Records, or defrauding of the King, by suppressing the true Record.

§. 6. By the *Statute of 12 R. 2. cap. 10.* there should be but Six Justices of Peace (in every Commission of the Peace) with the Justices of Assize.

The number.

After, by the *Statute 14 R. 2. cap. 11.* it was ordained, That there should be Eight Justices of Peace assigned, besides the Lords.

And two Lawyers (at least) shall be assigned in every County, to hear and determine Felonies and Trespasses done against the Peace, 18 E. 3. cap. 2. 34 E. 3. cap. 1. & 17 R. 2. cap. 10.

Also Justices of Peace ought to be resident and dwelling within the same County, (except Lords and Judges, &c.) 2 H. 5. cap. 4. & 2 H. 5. Stat. 2. cap. 1.

### Peace. CHAP. III.

§. 1. **P**EACE, in effect, (saith M. Fitzh.) is the Amity, Confidence, and Quiet that is between men; and he that breaketh this Amity or Quiet, breaketh the Peace. Fitz. Just. of P. 12.

Peace what.

Yet Peace (in our Law) most commonly is taken for an abstinence from actual and injurious Force, and offer of Violence; and so is rather a restraining of hands, than an uniting of minds. And for the maintenance of this Peace chiefly were the Justices of Peace first made.

§. 2.

Breach of it.

The Breach of this Peace seemeth to be any injurious Force or Violence moved against the Person of another, his Goods, Lands, or other Possessions, whether it be by threatening words, or by furious gesture, or force of the body, or any other force used *in terrorem*.

The Office of the Justice of Peace is principally to be exercised 'to the keeping of the Peace, and suppressing of and bringing to punishment persons using such injurious and unlawful Force or Violence. And yet (the Commission of the Peace being *pro bono Pacis, ac pro conservatione ejusdem, & pro quieto regimine & gubernatione populi,*) I see not why the Justices of Peace should be restrained from preventing and repressing such other Offences, Misbehaviours and Deceits, as may break the Amity, Quiet and good Government of the People, and whereof Discords, and so Breaches of the Peace, do often arise, (though there appear neither Force nor Violence in the Offence it self:) as Libellings, Cozenages, and such other Offences. *Vide tit. Good Behaviour.*

But it is no part of the Office of the Justice of Peace to forbid lawful Suits, albeit they shall do well to be Mediators of Peace in such Suits and Controversies as shall arise among their Neighbours. Neither shall any man be punished for suing any Writ in the King's Courts, *soit ceo de Droit ou de Tort. Co. L. 61.* Latch p. 48.

§. 3.  
Conservation of Peace.

The Conservation of this Peace (and therein the Care of the Justice of Peace) consisteth in three things, *viz.*

1. In



1. In preventing the Breach of the Peace, ( wisely foreseeing and repressing the beginnings thereof ) by taking Surety for the keeping of it, or for the good behaviour of the Offenders, as the case shall require.

2. In pacifying such as are in breaking of the Peace, see *postea*, titulo *Asfray*.

3. In punishing ( according to Law ) such as have broken the Peace.

But of the three, the first, the preventing Justice, is most worthy to be commended to the care of the Justices of Peace.

§. 4. "The Constituting and making Justices of Peace, is inherent in *it ho may*  
*Sta. 27 H. 8.* " and inseparable from the Crown of this Kingdom, and because *make them.*  
*8. c. 24.* " this amongst others had been severed therefrom, to the great diminution and detriment of that Royal State, and the hinderance and delay of Justice, as speaks the *Statute* of 27 H 8. It was thereby Enacted, " that no person should have authority to make any Justices of Peace, but " only the Kings, his Heirs and Successors by their Letters Patents, nor was, " nor is his power to be delegated, for the King cannot grant a man power " to make Justices of Peace, as is the book of 20 H. 7. 7a.

§. 5. Justices of Peace ( at this day ) are of three sorts, and are appointed or created by three means.

1. First, by Act of Parliament ; as the Bishop of *Ely* and his Successors, and their temporal Stewards of the Isle of *Ely* ( for the time being ) *27 H 8. 24a*  
shall be Justices of Peace within the said Isle, and shall use and have within the said Isle all such power as doth belong to any Justice of Peace within any County. *P. Just. 2.*

And so of the Archbishop of *Tork*, and the Bishop of *Durham*, and their Successors, and their temporal Chancellors, &c. *ibidem*.

Lamb. 26. 2. Secondly, By Grant made by the King by his Letters Patents under the Great Seal, ( and by his Bill assigned ; ) as Mayors, and the chief Officers in divers Corporate Towns: and such the King cannot discharge again at his pleasure, but they shall continue and enjoy their Jurisdiction according as their Letters Patents do enable them ; and therefore if the King granteth to a Mayor, or other Head-officer of a City or Corporate Town, and to their Successors, to be Justices of Peace in their City or Town, and after maketh out Commission of the Peace to others there, yet the Authority and Jurisdiction of the Mayor, &c. remaineth good, for that it was granted to them and their Successors, and is not revocable at the King's pleasure, as a Commission of the Peace is. *By grant.*

Br. Crom.  
 miss. 5,

" Which Grants and Charters may notwithstanding for some great and " general defect of, or miscarriage in the execution of the powers and authorities herein granted be repealed and the liberties seized ; so also may " the Kings Majesty upon reasonable cause moving him, *ne deesset populo in* " *Justitia exhibenda* grant concurrent Commissions of the Peace within any " such incorporations.

And such Justices of Peace by Grant or Patent have thereby the same power as the Conservators of the Peace had by the Common Law ; and, it seemeth, such power also as is given to the Justices of Peace ( or to any one Justice of Peace ) by express words in any Statute : But none of them have thereby the whole power which is ordinarily given to the Commissioners of the Peace by their Commissions. And so it seemeth of the first sort of Justices of Peace by Act of Parliament, *sc.* the Archbishop of *Tork*, and the Bishops of *Durham* and *Ely*, and their temporal Chancellors and Stewards.

Also concerning such Justices of Peace by Grant or Patent, if the Grant be made to such as be not learned in the Law, yet if the Grant be,

Ad

*Ad Pacem conservandam*, &c. or *Ad inquirendum tantum*, this is a good Grant: But if the Grant be made, *Ad audiendum & terminandum*, this is a void Grant, (*ut dicitur*) unless some one learned in the Laws of this Realm be also joyned with the other in the Commission; and then such a Commission made *Ad audiendum & terminandum* is good in Law. For in all cases where the Commission or Grant is, *Ad audiendum & terminandum*, it is meet that some, or one of them at the least, should be learned in the Laws of this Realm. See the Statutes 18 E. 3. cap. 2. & 13. R. 2. cap. 7. & 17 R. 2. cap. 10.

§. 7. 3. The third sort of Justices of Peace are by Commission (made of <sup>By Com-  
missions,</sup> common course under the Great Seal of England: ) and these are appointed by the discretion of the Lord Chancellor, 'or Lord-keeper of the 'Great Seal. And yet the Justices of Peace within the County Palatine of Lancaster are to be made by Commission under the Seal of the same Duchy, by the Statute 27 H. 8. cap. 24.

§. 8. But these Commissioners of the Peace their Authority doth determine <sup>How they  
determine,</sup> by divers means, yet more usually by three means.

First, By the Death of the King, or by his Resignation of his Crown: For by the Commission he maketh them *Justiciarios nostros*, so that he being once dead, or having given over his Crown, they are no more his Justices; and the Justices of the next Prince they cannot be, unless it shall please him afterwards so to make them. *Lamb. 71. Dyer 165. a.*

"After the death of a King of England, his Successor by Proclamation signifies that all in Judicial places as Justices of Peace, &c. shall continue and exercise their Offices, yet is it not safe for them to act without a new Commission as was done 1<sup>o</sup>. *Ca. primi* touching the Justices at Westminster *Cro. 1. Ca. p. 1.*

2. At the King's Pleasure, and that in two sorts.

§. 9. 1. Either by the King's Pleasure expressed, (as the King in express <sup>§ E. 4. 31.  
Br. Com.  
18.  
1: Aff. 21.  
Br. Com.  
13.]</sup> words may discharge them by his Writ under the Great Seal) or by *superfedeas*: but the *superfedeas* doth but suspend their Authority, which may be revived by a *Procedendo*.

2. Or by Implication; (as by making other Commissioners of the same kind, and within the same limits, leaving out the ancient Commissioners names.) 10 E. 4. 7. & 3. Mar. 1.

But here the ancient Commissioners must have knowledge of such new Commission: for this determination of the old Commission groweth not immediately by making the new Commission, but either by giving special notice of the new Commission unto the old Commissioners; or else by and after the reading (or proclaiming) of the new Commission at the Assizes, Sessions of the Peace, or at the full County; or else by holding of some open Sessions by virtue of the new Commission, (in which two last cases the old Commissioners must take notice of the new Commission.) And in all these cases, if the ancient Commissioners do sit by virtue of their ancient Commission, and after such notice or publishing of the new Commission, all, whatsoever such ancient Commissioners shall so do, is void: And contrariwise, until such notice or publishing of the new Commission, whatsoever mean acts such ancient Commissioners shall do, by virtue of their ancient Commission, are good in Law. See 34. Aff. 8. B. Co. 14.

Also in all places where any ancient Commission of the Peace is determined by a new, yet no Process or Suit depending before the old Commissioners shall be discontinued thereby; neither shall any other thing done by the Justices of the Peace by force of their ancient Commission be made or become void thereby. <sup>11 H. 8. c.  
6. P. Disco,  
6.</sup>

3. By

3. By the accession of another Office: as when a Justice of Peace is chosen to be Sheriff of the same County, his Authority of a Justice of Peace there is suspended during his Sheriffwick; but after that another is chosen and sworn Sheriff of the same County, then this Authority as a Justice of Peace remaineth as it was before, without any renewing of the Commission, and without any of the Oaths newly to be taken by him; except his name be then put out or left out of the Commission, as sometimes hath been used to be done, and perhaps only to get new Fees.

The reason why his Authority of a Justice of Peace is suspended during his Sheriffwick seemeth to be, for that the Sheriff is a Minister, and a Justice of Peace is a Judge; and the one is as necessary as the other. And besides, the Office of a Judge being to command, and of a Minister to execute the Commandment; if one man shall be both Judge and Minister, thereof it would follow, that the Sheriff ought to command himself, or that he should, as an Officer, serve his own Precept made as Justice or Judge, the which cannot be.

Also if a Justice of Peace be made a Coroner of the County, this 'by some opinions is a Discharge of his Authority of Justiceship of Peace: otherwise it seemeth where he shall be made an Escheator, Under-sheriff, Bailiff, or the like. *Lamb. 72. quere.*

But if a Justice of Peace be made a Knight, or Serjeant at Law, or hath any greater name or office of Honour or Dignity given him, this taketh not away his Authority of a Justice of Peace. *Br. Commiss. 4. & 22. See also the Statute of 1 E. 6. cap. 7.*

Note also, that although by the Death of the King, or by his Resignation, the Authority of all Justices of Peace 'which are by Commission (yea and of all Judges, Commissioners of Oyer and Terminer, Commissioners of Gaol-delivery, Sheriffs, Escheators, and other Officers that are by Commission) doth cease; yet Mayors, and chief Officers in Cities and Corporate Towns, (which have the Authority of Justices of Peace, or of the Conservation of the Peace, by Grant under the King's Letters Patents to them and their Successors) their Authority still remaineth, notwithstanding the Kings Death or Resignation.

So also the Office and Authority of the High Constables and petty Constables seemeth to remain, notwithstanding the Death of the King, &c. for that their Authority is by the Common Law, and to their said Office the Conservation of the Peace remaineth, as a thing incident and unseparable from the same.

Coroners also do remain Conservators of the Peace (within the County where they are Coroners) notwithstanding the Kings Death, &c. for they are made by the Kings Writ, and not by Commission; and their Office and Authority doth remain untill they be removed by the Kings Writ; and their Office remaining, the Conservation of the Peace remaineth as incident thereto.

#### CHAP. IV.

**E**Very Justice of Peace (before he shall take upon him to exercise the Office of a Justice of Peace) shall take two corporal Oaths; the one concerning the Office of a Justice of Peace, the other concerning the Kings Supremacy. *Thir Oath*

The Oath concerning this Office seemeth to be by force of the Statute made 13 R. 2. c. 7. And yet see the Oath of the Justices made *An. 18. E. 3.* much



much to the like effect that now it is : in which year also M. Marrow taketh it that Justices of Peace were first made, they having then first power given them to hear and determine Felonies and Trespasses against the Peace, as appeareth by the Statute of 18 E. 3. c. 2

*The form of the Oath is at this day as followeth.*

§. 2. **Y**E shall swear, that as Justice of the Peace in the County of *Camb.* in all Articles in the Kings Commission to you directed, you shall do equal right to the Poor and to the Rich, after your cunning, wit and power, and after the Laws and Customs of the Realm, and Statutes thereof made: And ye shall not be of Council of any quarrel hanging before you: And that ye hold your Sessions after the form of the Statutes thereof made: And the Issues, Fines, and Amercements that shall happen to be made, and all Forfeitures which shall fall before you, ye shall cause to be entred without any concealment (or imbezilling,) and truly send them to the Kings Exchequer; ye shall not lett for gift, or other cause, but well and truly you shall do your Office of Justice of the Peace in that behalf: And that you take nothing for your Office of Justice of the Peace to be done, but of the King, and Fees accustomed, and costs limited by the Statute: And ye shall not direct, nor cause to be directed, any Warrant (by you to be made) to the parties, but ye shall direct them to the Bailiffs of the said County, or other the Kings Officers (or Ministers,) or other indifferent persons, to do execution thereof. *So help you God, &c.*

The parts of this Oath are shortly Six.

§. 3.  
Parts of  
the Oath.

1. That they shall do equal Right to rich and poor, and according to the Laws and Statutes of the Realm.

2. That they shall not be of Counsel with any person in any matter depending before them.

3. That they shall keep their Sessions according to the Statutes, which (as it seemeth by the prescript of the Statute 2 H. 5. cap. 4.) ought to be in the first Week after the Feast of S. Michael, after the Epiphany, after the clause or Feast of Easter, and after the Translation of S. Thomas the Martyr, being the third day of July. And accordingly the Quarter-Sessions of the Peace ought so still to be holden throughout the Realm. See Lam. 579, 580. And yet by the Statute of 14 H. 6. c. 4. the Justices of Peace of *Middlesex* are to keep their Sessions but twice in the year. 2 H. 5. 4.  
P. Just. 5.

4. That all Issues, Fines, Amercements, and Forfeitures which happen before them, be by them truly entred, and sent into the Exchequer.

5. That they take nothing for doing of their Office, but of the King, and the accustomed Fees appointed by the Statutes.

6. That they shall not direct any their Warrants to the parties, but to the Bailiffs of the County, or to other of the Kings Officers, as to the Sheriff, High-Constable, Petty-Constable, &c. or other indifferent persons.

§. 4.  
Sessions.

Now farther concerning the times of the Quarter-Sessions, it seemeth to be the intent or meaning of the afore-recited Stat. 2 H. 5. c. 4. that the weeks wherein the afore-said Feasts of S. Michael, the Epiphany, and S. Thomas fall, must be first ended, before the Sessions can begin. So that if any of these three Feast-days shall fall upon the Sunday, Monday, Tuesday, or Wednesday, then shall the Sessions (in our County of Cambridge) be upon Thursday seven-night after; but if any of those Feasts shall fall upon Thursday, Friday, or Saturday, then shall our Sessions be upon the next Thursday after; and for our Easter Sessions, upon the Thursday seven-night after Easter-day. 36 E. 3. 13;

The other Oath, concerning the Kings Supremacy, is by force of the Statute made *primo Eliz. c. c. 1.* The form of which Oath also followeth. P. Crown  
4.

§. 5.  
Oath of  
Supremacy.

**I** Michael Dalton do utterly testifie and declare in my conscience, That the Kings Highness is the only Supream Governour of this Realm, and of all other his Highness Dominions and Countries, as well in all Spiritual or Ecclesiastical things (or causes) as Temporal; and that no forein Prince, Person, Prelate, State, or Potentate, hath, or ought to have, any Jurisdiction, Power, Superiority, Pre-eminence, or Authority, Ecclesiastical or Spiritual, within this Realm: And therefore I do utterly renounce and forsake all forein Jurisdiction, Powers, Superiorities, and Authorities, and do promise, That from henceforth I shall bear Faith and true Allegiance to the Kings Highness, his Heirs and lawful Successors, and (to my power) shall assist and defend all Jurisdiction, Priviledges, Pre-eminences and Authorities granted or belonging to the Kings Highness, his Heirs and Successors, or united and annexed to the Imperial Crown of the Realm. *So help me God, and by the contents of this Book.*

§. 6.  
Crom. II.  
P. Crown  
§. vide.

The Justices of the Peace ought to take this Oath for the Supremacy in the open Court of Sessions where they shall serve, by the Statute 5 Eliz. I. (as M. Crompton holdeth: ) and it were very fitting so to be; or else to be taken at the Assizes by the Judges, lest (by indirect practice) it be neglected.

Seci E. I.

Yet it is most usual that both of these Oaths are taken by a special Commission, (*viz.* by a Writ of *Dedimus Potestatem*, directed out of the Chancery to some ancient Justice of Peace, to take the same Oaths) which by them is to be certified into the same Court, at such day as the Writ commandeth. *The form of which Certificate, see hic postea.*

I El. I.

"And the words of that Statute being, that the Oath shall be taken before such person or persons, as the Queen her Heirs and Successors under the Great Seal of England, to assign and name, by that it seemeth that it must be taken before Commissioners under the Great Seal only, unless the taking thereof be by any later Statute directed to be before other persons.

§. 7.

The Justice of Peace (or other person) to whom a *Dedimus potestatem* shall be directed, to take the Oaths of a new Justice of Peace, if he shall return the Commission, and the Oaths to be taken, when they were not taken, he is fineable in the Star-chamber.

Co. 8. 98.

"But at this day, in as much as the Star-chamber is taken away by the Statute of 17 Ca. I. c. 10. the proceedings against such Commissioner for his miscarriage herein, or against a Justice of Peace for execution of his Authority, not having first taken the Oaths required of him, may be in the Court of Kings-Bench, as is declared by that Statute they might have been before, for it is thereby recited that all matters examinable or determinable in the Court commonly called the Star-chamber, may have their proper remedy and redress, and their due punishment and correction by the Common Law of the Land, and in the ordinary course of Justice elsewhere, which was a very great reason of taking away the said Court.

So if the new Justice of Peace shall exercise this Office before he hath taken both these Oaths, he is likewise fineable in the Star-chamber.

Crom. II.  
Co. II. 98.

Also if a Justice of Peace shall not perform his Oath (concerning his Office,) it seemeth he is fineable in the Star-chamber, &c. Yet see Co. I. r. 98. a. That a man shall not be charged in any Court Judicial for the breach of a general Oath, which he taketh when he is made an Officer or Minister, &c. But if he do a thing contrary to his Oath, that aggravates his offence.

There is a third Oath tending to the Declaration of such duty as every well-affected Subject by bond of Allegiance, and by the Law of God, ought

ought to bear his Sovereign; which Oath is by force of the Statute 3 Jac. c. 4. And is to be taken also by all Justices of Peace (among others) by the Statute 7 Jac. c. 6. Which Oath is usually taken before the Judges of the Assize of the same County where the parties (to be sworn) reside, but may be taken by the words of that Statute before Commissioners to that purpose made.

*The form of this Oath is thus:*

**I** Michael Dalton do truly and sincerely acknowledg, profess, testifie and declare in my conscience before God and the World, that our Sovereign Lord K. James is lawful and rightful King of this Realm, and of all other his Majesties Dominions and Countries: And that the Pope, neither of himself, nor by any Authority of the Church or See of Rome, or by any other means, with any other, hath any Power or Authority to depose the King, or to dispose any of his Majesties Kingdoms or Dominions, or to authorize any Forein Prince to invade or annoy him or his Countries, or to discharge any of his Subjects of their Allegiance and Obedience to his Majesty, or to give licence or leave to any of them to bear Arms, raise Tumults, or to offer any violence or hurt to his Majesties Royal Person, State or Government, or to any of his Majesties Subjects, within his Majesties Dominions. Also I do swear from my heart, That notwithstanding any Declaration, or Sentence of Excommunication, or Deprivation, made or granted, or to be made or granted, by the Pope or his Successors, or by any Authority derived, or pretended to be derived, from him or his See, against the said King, his Heirs or Successors, or any Absolution of the said Subjects from their Obedience, I will bear Faith and true Allegiance to his Majesty, his Heirs and Successors, and him and them will defend to the uttermost of my power, against all Conspiracies and attempts whatsoever, which shall be made against his or their Persons, their Crown and Dignity, by reason or colour of any such Sentence or Declaration, or otherwise; and will do my best endeavour to disclose and make known unto his Majesty, his Heirs and Successors, all Treasons and Traitorous Conspiracies, which I shall know or hear of to be against him or any of them. And I do farther swear, That I do from my heart abhor, detest, and abjure, as impious and heretical, this damnable Doctrine and Position, That Princes which be Excommunicated or deprived by the Pope, may be deposed or murdered by their Subjects, or any other whatsoever. And I do believe, and in conscience am resolved, That neither the Pope, nor any person whatsoever, hath power to absolve me of this Oath, or any part thereof, which I acknowledg by good and full authority to be lawfully ministered unto me, and do renounce all Pardons and Dispensations to the contrary. And all these things I do plainly and sincerely acknowledg and swear, according to these expresse words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, or mental evasion, or secret reservation whatsoever. And I do make this Recognition and Acknowledgment heartily, willingly, and truly, upon the true Faith of a Christian. *So help me God.*

- §. 9. Every Justice of Peace is taken to be within the Statute of 25 Ca. 2d. intituled, *An Act for preventing dangers which may happen from Popish Recusants*; and therefore every Justice of Peace inhabiting or residing at the time of his admittance and placing in that office in London or Westminster, or within 30 miles of the same, shall the next Term after his admittance in the Court of Chancery, or Kings Bench between the hours of Nine and Twelve in the forenoon take the Oaths of Supremacy, and during that time all Pleas and Proceedings shall cease; and such persons



“persons not having taken the said Oaths in our Courts aforesaid, shall at  
 “the Quarter Sessions for that County or place where they shall reside next  
 “after their admittance take the said Oaths, and such persons shall imme-  
 “diately after Divine Service and Sermon, upon some Lords day within  
 “Three moneths after their admittance in, or receiving their authority or  
 “employment in some Parish Church receive the Sacrament of the Lords  
 “Supper, and before he take the said Oaths, shall in such Court deliver a  
 “Certificate of his receiving the Sacrament under the hands of the Mini-  
 “ster and Church-warden, and shall make proof of the truth thereof by  
 “the Oath of Two credible witnesses at the least. And at the time of  
 “taking the said Oaths, the parties shall make and subscribe this Declara-  
 “tion. I A. B. Do declare, that I do believe that there is not any Tran-  
 “substantiation in the Sacrament of the Lords Supper, or in the Elements  
 “of Bread and Wine, at or after the Consecration thereof by any person  
 “whatsoever. Which Oaths and Declaration being not taken and made,  
 “the persons are rendred incapable, and the place void, and if after such  
 “neglect or refusal the person concerned shall execute such offices he is  
 “made incapable of suing, or being Guardian, Executor or Administrator,  
 “and of any gift, and to bear office, and shall forfeit 500 pounds being  
 “convicted of exercising the office, not having taken the Oaths. 25  
 “Ca. 2d.

*Nota quod Juramentum debet habere comites, Veritatem, Judicium, & Justi-  
 tiam, Jer. 4. 2. Et si ista defuerint, non Juramentum, sed Perjurium erit. Nemo  
 se seducat; qui enim per lapidem false jurat, perjurus est. Quacunque arte ver-  
 borum, vel mentis reservatione juret aliquis, Deus ita accipit sicut ille cui jura-  
 tur intelligit: Et minus malum est per Deum falsum jurare veraciter, quam per  
 Deum verum jurare fallaciter.*

Now for that all the Authority and power of these Commissioners or  
 Justices of the Peace ariseth partly out of their Commission, and partly  
 out of the Statutes; I will first set down the form of the Commission it self,  
 shortly considering the parts thereof.

#### The Form of the Commission of the Peace. CHAP. V.

§. I. CAROLUS, &c. Prædilecto & fideli Thomæ Coventry militi Domi-  
 no Custod. Mag. Sigilli Angliæ, Jacobo Ley, Comiti Thesaurario Angliæ,  
 &c. salutem.

I.  
 Ad pa-  
 cem con-  
 servan-  
 dum;

*Sciatis, quod assignavimus vos, conjunctim & divisim, & quemlibet vestrum,  
 Justiciarios nostros, ad Pacem nostram in Comitatu nostro Cantabrigiæ con-  
 servandam; ac ad omnia Ordinationes & Statuta pro bono Pacis nostræ, ac  
 pro conservatione ejusdem, & pro quieto regimine & gubernatione populi nostri  
 edita, in omnibus & singulis suis Articulis, in dicto Comitatu nostro (tam infra  
 Libertates quam extra) juxta vim, formam, & effectum eorundem custodien-  
 dum, & custodiri faciendum; Et ad omnes contra formam Ordinationum vel  
 Statutorum illorum, aut eorum alicujus, in Com' præd' delinquentes, castigand-  
 um & puniendum, prout secundum formam Ordinationum & Statutorum  
 illorum fuerit faciendum; Et ad omnes illos qui alicui, vel aliquibus de  
 populo nostro de corporibus suis, vel de incendio domorum suarum, minas fece-  
 rint, ad sufficientem securitatem de Pace vel bono gestu suo erga nos & populum  
 nostrum inveniendam coram vobis, seu aliquo vestrum, venire faciendum; &  
 si hujusmodi securitatem invenire recusaverint, tunc eos in prisonis nostris  
 (quousque hujusmodi securitatem invenerint) salvo custodiri faciendum.*

*Assignavimus etiam vos, & quolibet duos vel plures vestrum, (quorum ali-  
 quem*

quem vestrum, A, B, C, D, E, F, &c. unum esse volumus ) Justiciarios nostros ad inquirendum per Sacramentum proborum & legalium hominum de Comitatu prædicto, ( per quos rei veritas melius sciri poterit ) de omnibus & omnimodis Feloniis, Veneficiis, Incantationibus, Sortilegiis, Arte magica, Transgressionibus, Forstallariis, Regratoriis, Ingrossariis, & Extortionibus quibuscunque ; ac de omnibus & singulis aliis malefactis & offensis ( de quibus Justiciarii Pacis nostræ legitime inquirere possunt, aut debent ) per quoscunque & qualitercunque in Comitatu prædicto factis sive perpetratis, vel imposterum ibidem fieri vel attemptari contigerit : Ac etiam de omnibus illis qui in Comitatu prædicto in Conventiculis contra Pacem nostram, in perturbationem populi nostri, seu vi armata ierint vel equitaverint, seu imposterum ire vel equitare præsumperint ; ac etiam de omnibus his qui ibidem ad gentem nostram maihemandum vel interficiendum in insidiis jacuerunt, vel imposterum jacere præsumperint : Ac etiam de Hostelariis, & aliis omnibus & singulis personis qui in abusu Ponderum vel Mensurarum, sive in venditione Viſtualium, contra formam Ordinationum & Statutorum, vel eorum alicujus, inde pro communi utilitate Regni nostri Angliæ & populi nostri ejusdem editorum, deliquerunt, vel attemptaverunt, seu imposterum delinquere vel attemptare præsumperint in Com' præd' : Ac etiam de quibuscunque Vicecomitibus, Ballivis, Seneschallis, Constabulariis, Custodibus Gaolarum, & aliis Officiariis, qui in executione Officiorum suorum ( circa præmissa seu eorum aliqua ) indebite se habuerunt, aut imposterum indebite se habere præsumperint, aut tepidi, remissi vel negligentes fuerunt, aut in posterum fore contigerint, in Comitatu prædicto : Et de omnibus & singulis articulis & circumstantiis & aliis rebus quibuscunque per quoscunque & qualitercunque in Com' præd' factis sive perpetratis, vel quæ in posterum ibidem fieri vel attemptari contigerint, qualitercunque præmissorum vel eorum alicujus concernentibus plenius veritatem : Et ad indictamenta quæcunque sic coram vobis seu aliquibus vestrum capta, sive capienda, aut coram aliis nuper Justiciariis Pacis in Com' præd' facta sive capta ( & nondum terminata ) inspiciendum : Ac ad Processus inde versus omnes & singulos sic indictatos, vel quos coram vobis in posterum indictari contigerit, ( quosque capiantur, reddant se, vel utlagentur ) faciendum & continuandum : Et ad omnia & singula Felonias, Veneficia, Incantationes, Sortilegia, Artes magicas, Transgressiones, Forstallarias, Regratorias, Ingrossarias, Extortiones, Conventicula, Indictamenta prædicta, cæteraque omnia & singula præmissa, secundum Leges & Statuta Regni nostri Angliæ, ( prout in hujusmodi casu fieri consuevit aut debuit ) Audiendum & Terminandum ; & ad eosdem Delinquentes, & quemlibet eorum, pro delictis suis, per Fines, Redemptiones, Amerciamenta, Forisfacturas, ac alio modo ( prout secundum Legem & Consuetudinem Regni nostri Angliæ, aut formam Ordinationum vel Statutorum prædictorum, fieri consuevit aut debuit ) castigandum & puniendum.

I.  
Ad Inqui-  
rendum.Indicta-  
menta  
capere.Processus  
facere.Ad audi-  
endum &  
terminan-  
dum.

Proviso semper, quod si casus difficultatis super determinatione aliquorum præmissorum coram vobis, vel aliquibus duobus, vel pluribus vestrum eveniere contigerit ; tunc ad Judicium inde reddendum, nisi in præsentia unius Justiciariorum nostrorum de uno vel de altero Banco, aut Justiciariorum nostrorum ad Assisas in Com' præd' capiendas assignatorum, coram vobis, vel aliquibus duobus, vel pluribus vestrum, minime procedatur.

Exceptio.

Charge to  
the Justices.

Et ideo vobis & cuilibet vestrum mandamus, quod circa custodiam Pacis, Ordinationum, Statutorum, & omnium & singulorum cæterorum præmissorum, diligenter intendatis. Et ad certos dies & loca, quæ vos vel aliqui hujusmodi, duo vel plures vestrum ( ut prædictum est ) ad hæc provideritis, super præmissis faciatis Inquisitiones, & præmissa omnia & singula audiat & terminetis, ac ea faciatis & expleatis in forma prædicta, facturi inde quod ad Justitiam pertinet, secundum Legem & consuetudinem regni nostri Angliæ : Salvis nobis Amerciamentis, & aliis ad nos inde spectantibus.

To the  
Sheriff.

*Mandamus etiam tenore presentium Vicecomiti nostro Cantabrigiæ, quod ad certos dies & loca ( quæ vos vel aliqui hujusmodi, duo vel plures vestrum, ut prædictum est, ei, ut prædictum est, sciri feceritis ) venire faciat coram vobis, vel hujusmodi duobus vel pluribus vestrum ( ut dictum est ) tot & tales probos & legales homines de Balliva sua, ( tam infra Libertates quam extra ) per quos rei veritas in præmissis melius sciri poterit & inquiri.*

To the  
Custos  
Rotulor.

*Assignavimus denique te præfatum Johannem Cuts, Militem, Cust. Rot. Pacis nostræ in dicto Comitatu nostro. Ac propterea tu, ad dies & loca prædicta, Brevia, Præcepta, Processus, & Indictamenta prædicta, coram te & dictis sociis tuis venire facias, ut ea inspiciantur, & debito fine, terminentur, sicut prædictum est. In cujus rei testimonium, &c. Datum, &c.*

*The same in English.*

**C**HARLES &c. To Our Well-beloved and Faithful Thomas Coventry Knight, Lord Keeper of the Great Seal of England, and James Ley Treasurer of England, &c. Greeting. Know ye that We have assigned you, and every one of you, joyntly and severally, our Justices to keep our Peace in the County of Cambridge; And to keep and cause to be kept all Ordinances and Statutes made for the good of the Peace, and for Conservation of the same, and for the quiet Rule and Government of our People in all and every the Articles thereof, in our said County, ( as well within the Liberties as without ) according to the force, form, and effect of the same; and to chastise and punish all persons offending against the form of those Ordinances, or Statutes, or any of them, in the County aforesaid, as according to the form of those Ordinances and Statutes shall be fit to be done; And to cause to come before you, or any of you, all those persons who shall threaten any of the people in their persons, or in burning their Houses, to find sufficient Security for the Peace, or for the Good Behaviour toward Us and the People; and if they shall refuse to find such Security, then to cause them to be kept safe in Prison untill they find such Security. We have also assigned you, and every two or more of you ( whereof any of you the said A. B. C. shall be one ) our Justices to enquire by the Oath of good and lawful men of the County aforesaid, by whom the truth may be better known, of all and all manner of Felonies, Witchcrafts, Inchantments, Sorceries, Magick-Art, Trespasses, Forekallings, Regratings, Ingrossings, and Extortions whatsoever; And of all and singular other misdeeds and offences, of which Justices of Peace may or ought lawfully to enquire, by whomsoever and howsoever done or perpetrated, or which hereafter shall happen howsoever to be done or attempted in the County aforesaid; And of all those who in the County aforesaid have either gone or ridden, or hereafter shall presume to go or ride in Companies with armed force against the Peace, to the disturbance of the People; And also of all those who in like manner have lain in wait, or hereafter shall presume to lie in wait, to maim or kill our people; And also of Inn-holders, and of all and singular other persons who have offended or attempted, or hereafter shall presume to offend or attempt in the abuse of Weights or Measures, or in the sale of Victuals, against the form of the Ordinances or Statutes, or any of them, in that behalf made for the common good of England, and the people thereof in the County aforesaid; And also of all Sheriffs, Bailiffs, Stewards, Constables, Gaolers, and other Officers whatsoever, who in the execution of their Offices about the premises, or any of them, have unlawfully de-  
‘meaned



‘meaned themselves, or hereafter shall presume unlawfully to demean themselves, or have been or hereafter shall be careless, remis, or negligent in the County aforesaid: And of all and singular Articles and Circumstances, and all other things whatsoever, \* by whomsoever and howsoever done or perpetrated in the County aforesaid, or which hereafter shall happen howsoever, to be done or attempted in any wise more fully concerning the truth of the premisses, or any of them: And to inspect all Indictments whatsoever so before you or any of you taken or to be taken, or made or taken before others, late Justices of the Peace in the County aforesaid, and not as yet determined; and to make and continue the Process thereupon against all and singular persons so Indicted, or which hereafter shall happen to be Indicted before you, untill they be apprehended, render themselves, or be out-lawed: And to hear and determine all and singular the Felonies, Witchcrafts, Inchantments, Sorceries, Magick-Arts, Trespasses, Forestallings, Regratings, Ingrossings, Extortions, Unlawful Assemblies, Indictments aforesaid, and all and singular other the premisses, according to the Laws and Statutes of *England*, as in like case hath been used or ought to be done: And to chastise and punish the said persons offending and every of them for their offences, by Fines, Ransoms, Amercements, Forfeitures, or otherwise, as ought and hath been used to be done, according to the Laws and Customs of *England*, or the form of the Ordinances and Statutes aforesaid.

\* Note,  
Here is neither person,  
time, nor  
place excepted.

‘Provided always, That if a case of difficulty upon the determination of any of the premisses shall happen to arise before you, or any two of you, or more of you; then you, nor any two or more of you do proceed to give Judgment therein, except it be in the presence of one of the Justices of the one or other Bench, our Justices of Assize in the County aforesaid.

‘And therefore We command you and every of you, That you diligently intend the keeping of the Peace, Ordinances, Statutes, and all and singular other the premisses; And at certain days and places which you, or any such two, or more of you, as is aforesaid, shall in that behalf appoint, ye make Inquiries upon the premisses, and hear and determine all and singular the premisses, and perform and fulfill the same in form aforesaid, doing therein that which to Justice appertaineth, according to the Law and Custom of *England*: Saving to us the Amercements, and other things to us thereof belonging.

‘And we command by virtue of these presents the Sheriff of the said County of *Cambridg*, that at certain days and places which you, or any such two or more of you, as aforesaid, shall make known to him, as aforesaid, he cause to come before you, or such two or more of you, as aforesaid, such and as many good and lawful men of his Bailiwick (as well within Liberties as without) by whom the truth in the premisses may be the better known and inquired of.

‘Lastly, we have assigned you the said *Jo. Cuts* Knight, Keeper of the Rolls of the Peace in the said County. And therefore you shall cause to be brought before your self and your said Fellows, at the said days and places, the Writs, Precepts, Processes, and Indictments aforesaid, that the same may be inspected, and by a due course determined, as aforesaid. In witness whereof, &c.

‘Note, by this last Clause the Keeper of the Rolls shall have the custody of Indictments, Presentments, Bills, Recognizances, and such like Records of Sessions; but not the Custody of Records of Riots, Precepts of Peace, or other special Records, or other Records not pertaining to the general Sessions.

This

§. 3. "The Commission of the Peace was, when Justice *Fitzherbert* and some  
 4 Instit. "others wrote, incombred and burdened with many Statutes, some whereof  
 P. 171. "were repealed and with some, whereas there were none such, and stuff  
 "with many vain Repetitions, and many Corruptions crept therein by the  
 "mistaking of Clerks: for amendment and correction of which, Sir  
 "Christopher May chief Justice of England assembled all the Judges of  
 "England M. 32. & 32. Eliz. and upon perusal of the former Commission  
 "of the Peace, and often Conference within themselves, resolved upon a  
 "Reformation of the former, with divers additions and alteration as it  
 "standeth at this day both in matter and method.

Correc-  
 tion of the  
 Com.

§. 4. This Commission hath two parts, containing the Power of the Justices of Peace.

The first *Assignavimus* (or first part) of the Commission doth give power to any one Justice of Peace (more, or all) to keep, and cause to be kept the Peace, and all Ordinances and Statutes made for the Conservation of the Peace, and for the quiet Government of the people: As namely the Statutes made for Hue and Cry after Felons; and the Statutes made against Murtherers, Robbers, Felons, Night-walkers, and Affrayers, Armor worn *in terrorem*, Riots, Forcible Entries, and all other force and violence; all which be directly against the Peace. The particulars whereof you shall find more fully hereafter, and most of them under their proper Titles.

Stat. Win.  
 13 E. 1.  
 2 E. 3. 6.  
 2 E. 3. 3.

By this first Clause in the Commission, the Justices of Peace have as well all the ancient power touching the Peace which the Conservators of the Peace had by the Common Law, as also that whole Authority which the Statutes have since added thereto.

Lamb. 46.

The means which the Justices of Peace must use for the keeping of the Peace, and for the execution of these Statutes, are as followeth.

For to prevent the breach of the Peace, the Justice of Peace may send his Warrant for the party, and may take sufficient Sureties of him (by Recognizance) for keeping the Peace, or for the Good Behaviour, (as the case shall require:) and may send the party to the Gaol for not finding such Sureties.

But for these Statutes made for the Peace, they are to be executed according to such prescript and order as themselves do deliver; wherein if no power at all be expressly given to any one Justice of Peace alone, then can he not otherwise compell the observation thereof (as it seemeth) then by Admonition only: In which behalf if he shall not be obeyed, he may prefer the Cause at the Sessions, and work it to a Presentment upon the Statute, and so (by the help of his fellow-Justices) to hear and determine thereof as Law requireth.

Lamb. 47.

And here note, That whereas before the making of the Statute 1 Ed. 3. cap. 16. there were no Justices of Peace within this Realm, (but only Conservators of the Peace, as is before shewed:) and whereas by the Commission of the Peace, presently after, and to this day, the Justices of Peace had, and still have, the Statute of Winchester given them in charge, to execute the same; which Statute of Winchester (being made 13 E. 1.) was long before there were any Justices of Peace: By this it may appear, that the King by his Commission may commit the execution of the Statutes and Laws to whom he shall please. And so also a Justice of Peace, by virtue of the Commission, may execute any Statute whereunto he shall be enabled by the said Commission, although there shall be no such express power given to him so to do by the words or letter of the same Statute.

§. 5. The second *Assignavimus* in the Commission doth give authority to any two

two

two Justices of the Peace (or more, the one being of the *Quorum*) in these five things following:

1. To enquire (by a Jury) of all Offences mentioned within the Commission.

2. To take and view all Indictments or Presentments of the Jury.

3. To grant out Process against the Offenders, thereby to cause them to come and answer.

4. To hear and try all such Offences (upon any former or future Indictments taken before themselves, or before any other Justices of the Peace) after the Offenders be come in.

5. To determine thereof, by giving Judgment, and inflicting Punishment upon the Offenders according to the Laws and Statutes; to wit, by Fine, Imprisonment, or otherwise, according to Law: But not to award any Recompence to the party wronged, otherwise then by perswasion.

But all the business included within the second *Assignavimus* belongeth to the Sessions of the Peace; and therefore I leave here to write any farther thereof.

§. 6. Note also, That there are divers *Statutes* which be not specified within the Commission, and yet are committed to the charge and care of the Justices of Peace; but all such *Statutes* which do give expressly any power or authority to the Justices of Peace, are to them a sufficient Warrant and Commission of themselves, although they be not recited in the Commission; and all such *Statutes* are also to be executed by them, according as the same *Statutes* themselves do severally prescribe and set down.

And for that most of the business and practice of the Justices of Peace doth consist and lie in the Execution of such *Statutes* as are committed to their charge (whether they be specified in the Commission, or not specified there) the numbers of which *Statutes* are exceedingly increased of late years, to the over-burthening of all the Justices of Peace; and (the rather) to give some little help to such Justices of Peace who (being destitute of the assistance of such as are learned in the Laws) are daily to administer Justice, and to execute their Office at home, and out of their Sessions; I have, for their better ease herein, endeavoured (in this Treatise) to set down more orderly and particularly the several parts and branches of every such *Statute* by it self, under their proper Titles, with farther referments to the *Statutes* themselves at large, or to the Abridgments.

## CHAP. VI.

§. 1.  
Their  
Power.

THE Power and Authority of the Justices of Peace (as well given them by the said Commission as by the *Statutes*) is in some cases Ministerial or Regular, and limited as a Minister only; and in some other cases judicial or absolute, and as a Judge.

Ministerial, when he is thereunto commanded by an higher Authority.

As upon { A *supplicavit*, out of the Chancery or Kings Bench, for the taking of Surety for the Peace, or Good Behaviour. See hereof, *tit. Surety for the Peace*.

A Writ upon the Statute of Northampton, upon a Forcible Entry. See hereof *tit. Forcible Entry*.

In the Execution of which two Writs, the Justice of Peace may proceed no farther, or otherwise, then he is authorized by such Writ; and is also to return the Writ, and to certify his doings therein, into the Court whence the Writ came.



So upon a *Certiorari* out of any of the Higher Courts at *Westminster*, directed to the Justices of Peace (or to any of them) to certify any Recognizance, Indictment, or other Record, taken before him, or them, or any of them; or in his or their hands. Of which see more, *Postea*.

- §. 2. But in all other cases within their authority, the power of the Justices of Peace seemeth to be absolute, (in some manner) so as they, and every of them, may of their own power proceed *ex Officio*, and as a Judge: yet in this also their power is limited; for they may neither hang a man for a Trespass, nor fine him for a Felony, but must proceed in all things according as they are prescribed by the Commission, and by the said several Statutes.

Discretion.

And yet for that all considerable circumstances can neither be comprehended in the Commission, nor foreseen at the time of the making of the Statutes, therefore oftentimes some things are referred to the consideration of the Justices of Peace, and left to be supplied by them in their Discretion.

The Commission of the Peace (in it self) doth leave little or nothing to the Discretion of the Justices of Peace, but doth limit them to proceed *secundum Leges, Consuetudines, Ordinationes & Statuta*: And indeed to leave too much to Discretion, were to open a gap to corruption.

But by some late Statutes some things are (therein by special words) referred to the Discretion of the Justices of Peace; some out of Sessions, and some at their Sessions.

I will here only set down some particulars of such things as are referred to their Discretions out of their Sessions.

- §. 3. Some things referred to the discretion of one Justice of Peace out of the Sessions, which you may more fully see hereafter in this Book, in the several Titles here under-written.

**F**lesh killed in Dent, one Justice of Peace may give to the Poor at his discretion. But this Statute is expired. *Fifth-days.*

1 Jac. 29.  
5 El. 4. One Justice may compell any person meet (in his discretion) to be bound an Apprentice.

5 El. 4. One Justice of Peace may cause all such persons as be meet, to labour, *Labourers.* (by his discretion) to work in Harvest and Hay-time.

2 E. 6. 10. Malts that be deceitful may be sold, &c. at such reasonable prices as one Justice of Peace (in his discretion) shall think expedient.

1 Jac. 31. One Justice of Peace (as seemeth) may (by his discretion) give directions to the Searchers, Watchmen, and Keepers, &c. of persons infected with the Plague. *Plague.* *Vide Cromp. 122. b.*

43 El. 7. Trespasses in Corn, Orchards, Hedges, or Woods, which (in the discretion of the Justice) are not thought able to give satisfaction, shall be whipped. *Trespasses.*

17 E. 4. 4. It seems that one Justice of Peace may hear and determine by examination, or otherwise, by his discretion, the Offences committed in Tile-making. *Tiles.*

- §. 4. Some things referred to the discretion of two Justices of Peace out of the Sessions.

5 E. 6. 25. **T**wo Justices may allow and discharge Ale-house-keepers, as they shall think meet. But they ought to allow none but such as be capable and needful for the place. *Ale-house.*

5 E. 6. 25. Two Justices may take Recognizance of Ale-house-keepers for keeping good Orders, &c. according to their discretions.

Two Justices may appoint Over-seers of Woollen Cloth by the year, or *cloth*, for shorter time, by their discretion.

Clothiers, their Work-folks imbezilling any part shall be punished, &c. by the discretion of two Justices.

Two Justices may grant their Warrant to call before them any person or persons which in their discretions shall be thought fit to discover any offence in the making of deceiveable Woollen-cloth, &c. 21 Jac. chap. 18.

Servants, &c. assaulting their Master, may be imprisoned for one year, *Labourers*, or less, at the discretion of two Justices.

Two Justices may (by their discretion) compell Women to serve, and for such wages, and in such sort, as they think meet.

Two Justices may tax others of the County (by their discretions) towards the relief of places infected, &c. *Plagues*.

43 El. 2. Two Justices may tax any in the Hundred (by their discretions) towards the relief of the Poor of any Town that is over-charged. *Poor*.

Two Justices may dispose of all Forfeitures to grow upon the Statutes of Rogues, at their discretions, &c. *Rogues*.

Two Justices may assess (according to their discretions) proportionably all the Parishes within the Hundred, towards a Contribution for the parties charged upon a Robbery, &c. *Robbery*.

Two Justices shall take order (by their discretion) to set poor Souldiers, &c. to work that cannot get work; and, for want of work, may tax the Hundred (by their discretions) for the relief of such Souldiers, &c. *Souldiers*.

Two Justices may fine (by their discretions) the head-Officers in Boroughs and Market-Towns that do not view, &c. all Weights and Measures, or do not break and burn the defective. *Weights*.

Two Justices may fine (by their discretions) all Buyers and Sellers with unlawful Weights and Measures.

There be some other Statutes, and some other Cases, wherein the discretion of the Justices of Peace (out of their Sessions) is tolerated: but the counsel of Cicero herein is to be observed; *Sapientis est Judicis cogitare tantum sibi esse permissum, quantum sit commissum ac creditum.*

6. 5. Also the sayings of the Right Honourable, and late Reverend Judge and Sage of the Law, (in his Fifth part, in Rook's Case, and in his Tenth part, in Knightlie's Case) are worthy observation: *sc.* That Discretion is a knowledg or understanding to discern between truth and falshood, between right and wrong, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to our wills and private affections, for *talis discretio discretionem confundit*. And therefore in both the recited Cases it was holden, that though the words in the Commission of Sewers do give authority to those Commissioners to do according to their discretions, that yet their Discretion ought to be limited and bounded with the rules of Reason, Law, and Justice, and their Proceeding must be *secundum Legem & Consuetudinem Angliæ*; and so of other like Commissioners. Again, Discretion, saith he, is *scire vel discernere per Legem quid sit justum*; *viz.* to discern by the right line of Law, and not by private opinion. *Co. L. 227.* And therefore every Judge, Justice (or Commissioner) ought to have *duos Sales, viz. Salem Sapientie ne sit insipidus; & Salem Conscientie, ne sit diabolus.*

And (as M. Lambert well said) no way better shall the Discretion of a Justice of Peace appear, then if he (remembring that he is *Lex loquens*) shall contain himself within the lists of Law, and shall not use his discretion,

on, but only where both the Law permitteth, and the present case requir-  
eth.

In all cases therefore where the Statutes do refer the Trial of Offenders (or hearing, and determining of Offences) to the discretion of the Justice or Justices of Peace, out of Sessions, it is very requisite, that upon such Trial or hearing, the said Justices take due examination (of the Offenders themselves, and also of credible Witnesses) as well concerning the Fact it self as the Circumstances thereof; and upon Confession, or other due Proof of the Offence, then to proceed according to the Law and Justice.

‘But not to denounce or give Sentence before the party be cited, and heard to answer for himself: For this Defence is allowed by Gods Law. ‘Gen. 3. 9. Adam, *Where art thou?* and Gen. 4. 9. *where is thy brother Abel?* ‘And in the case of the five Cities, *I will go down and see*, Gen. 18. 21.

Note, That in all Cases where the Statute referreth the Trial, &c. to the discretion of the Justices, the said Statutes themselves seem also to enable the said Justices of Peace to take the Examination of Witnesses, and that upon an Oath. *vide tit.* hear and determine.

§. 6. Note farther, That the Justices of Peace, out of their Sessions, are now armed with far more ample Authority and Power then the ancient Conservators of the Peace were: For the Justices of Peace have double Power given them; the one of Jurisdiction, to convene the Offenders before them (by their Warrant,) and (in divers cases out of their Sessions) to examine, hear and determine the Cause; the other of Coercion, (*sc.* after the Cause heard) to constrain them to the obedience and observance of their Order and Decree (which notwithstanding must be according to the Rules of Law and Justice, as is aforesaid:) whereas the ancient Conservators of the Peace had no Jurisdiction or Authority at all, either to convene the Offender before them, or to examine, hear or determine the Cause; but had only Coercion, Prehension, (or Punishment of an Offender) in some few cases, as you may see before, *chap. 1.*

§. 7. And here I must farther put the Justices of Peace in mind, that their Authority and Power is limited, to be by them exercised only within the County or Counties where they be in Commission; and yet in that or those County or Counties the Justices of Peace of the County must not intermeddle in any City there, which is a County of it self, nor in any City or Corporate Town there (though it be no County of it self, but within the County) which have their proper Justices of Peace within themselves by the Kings Charter or Commission, (especially if in such Charter there be any special words of Prohibition, that the Justices of the Shire *non se intromittant*, &c.) except such Country Justices shall also be in Commission in such City or Town Corporate.

But in other Corporate Towns which have not their proper Justices of Peace, as also in all Liberties and Franchises (within the County) which have the return of the Writs, but have not their proper Justices, there the Justices of the Peace of the County ought to execute their Authority, and that by the words of their Commission.

Again, if a Parish shall extend into two or more Counties, or if part thereof shall lie within the Liberties of any City or Town Corporate (which have their proper Justices) and part without; then as well the Justices of Peace of every County, as also the Justices (or Officers) of such City or Town Corporate, shall intermeddle only within their own proper and distinct limits and bounds, (*sc.* within so much of the said Parish, &c. as lieth within their several liberties and limits) and not invade or deal in other Jurisdictions: for it shall be against Law and Reason, where

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porations.

Lamb. 48.  
69.  
Crompt. 8.  
& 181.

20 H. 7. 6,  
7.  
Crompt. ib.

See his tit.  
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where Offices and Jurisdictions are several, that the one should intermeddle within the Jurisdictions of the other.

Co. 4. 46. *ubi quis delinquit, ibi puniatur.* See *hic tit.* Homicide 33 H. 8. c. 6. 5 E. 1. p. 12. 23 El. c. 10. Neither shall any Justice of Peace deal in, or punish any Trespass, or other like Offence, committed in any other County against any penal Statute, though such Offender shall be brought before him, (see the Commission the first *Affig. & postea, tit. Guns, Labourers, and Partridges*;) except the Statutes, shall especially enable them thereto, as the Statutes 1 Jac. & 7 Jac. 'which do enable the Justice of the County where the Offence shall be committed, or the Offender apprehended, (See *tit. Partridges*) and the like; or that it be for matters of the Peace, or in cases of Felony, (See *tit. Affrays, and Felony.*)

2 H. 5. 4. "By the Statute of 2 H. 5. 4. St. 1. Justices of Peace might send their Writs for fugitive-labourers to every Sheriff of England.

Neither shall any Justice of Peace for the time that he shall make his abode or be out of the County (where he is in Commission) intermeddle to take any Recognizance, or any Examination, or otherwise to exercise his Authority in any matter that shall happen within the County, where he is in Commission; neither can he cause one to be brought before him out of the County where he is in Commission, into the other County; for, being out of the County where he is in Commission, he is but as a private man. *Vide hic tit. Affray, Imprisonment, Robbery, & Warrants, & Plo. 37. & 13 E. 4. 8.*

"In the case of *Hellier* against the Hundred of *Benhurst*, it was resolved that where a Person robbed in one County, made Oath before a Justice of the Peace of the same County being in London, that he might well take the Oath where he was, although out of the County, for he acted therein not *virtute officij*, but as a Person designed to a particular end and purpose, and the Plaintiff had his Judgment, but they held that if he acted or did any thing *virtute officij* out of his County it was void.

And yet a Sheriff being out of his County may make a Pannel, or may make Return of any Writ, 9 H. 4. 1.

Now my purpose is to set down more particularly what things the Justices of Peace, out of their Sessions of the Peace, may do in the Execution of their Commission, or of the Statutes wherewith they are charged. And herein you must observe that some things are permitted to be executed by any one, two, or more Justices; and some other things are more specially appointed and appropriated (by some Statutes) to some one certain Justice of Peace, or two, or more Justices; either in regard that such Justice or Justices is or are next the place, or are of the *Quorum*, or the like.

And here note, that whatsoever any one Justice of Peace alone may do (either for the Keeping of the Peace, or in other Execution of the Commission or Statutes) the same also may lawfully be done and performed by any two or more Justices.

Co. 4. 46. But where the Law giveth authority to two, there one alone cannot execute this: For *Una persona non potest supplere vicem duarum; & plus vident oculi quam oculus.* See Co. 5. 94. & Plo. 393. a. b Co. L. 181.

And yet where a Statute appointeth a thing to be done by two Justices of Peace (or more,) if the Offence be any misdemeanour or matter against the Peace, there, upon complaint made (of the Offence) to any one of those Justices of Peace, it seemeth that one of those Justices may grant out his Warrant to attach the Offender, and to bring him before the same Justice or any other Justice, to find Sureties for his appearance at the next General

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Sessions, there to make answer to such his Offence; or else he may bind the Offender to the Good Behaviour, and so to appear at the next Sessions, if the said Justice shall see any just cause so to do. But one Justice of Peace alone may not in any wise meddle to hear and determine the same.

Also when things by Statute are appropriated to some one certain Justice or more, there such Justice or Justices are to pursue such their Authority accordingly: and yet if such Justice or Justices shall therein joyn with any other Justice of the same County, it may seem no less lawful and warrantable; *tamen quare, & vide c. 11. 92.* Where an Authority is given to four, or to one of them; if two of them shall execute this, it seems they have not pursued their Authority. So if an Authority be given to three *conjunctim & divisim*, if two of them do it in the absence of the third, it is void, *Dyer 62.* for that the Authority is not pursued. 'But *Co. L. 181. b.* taketh a difference where the thing is *pro bono publico*, and where *pro privato*; as if a Sheriff upon a *Capias* maketh his Warrant to 4 or 3 jointly or severally to arrest the Defendant, two of them may arrest him, for that it is for the Execution of Justice, which is *pro bono publico*, and therefore shall be more favourably expounded then when it is only for private.

§. 9. Besides, there seemeth a general Rule to be put in *Stradling's Case* (in *M. Pl.*) That when a thing is appointed by any Statute to be done by or before one person certain, that such thing cannot be done by or before any other, but that it ought to be done as the Statute hath appointed; and by such express designation of one (or power given to one) certain person, all others are excluded.

And yet whereas by the Statute of 18 *Eliz.* the order to be taken for a Bastard-Child is appropriated to two Justices of Peace (one being of the *Quorum*) in or next unto the Parish where such Child shall be born; if two such Justices cannot agree upon the reputed Father (or in making such Order as the Statute requireth, or in other Execution of that Statute) *Quere* what is to be done. I have known the Case lately moved to the Judges of Assize, who thought it fit, that such difference between the two Justices of Peace should be referred to the hearing of the whole Bench, and the matter to be re-examined by them; and what order should be therein set down by the Bench, the same to stand good. *Vide tit. Bastard.*

But in such things appropriate to some one or more Justices of the Peace, if, without such Justice or Justices, all (or any of) the residue of the Justices of that County shall intermeddle therein, such their doings seem no wayes warrantable, but such their proceeding to be *Coram non Judice*, and that there is no necessity to obey them therein, as being no lawful Judges of the Cause.

The Authority of Justices of Peace, as well in as out of Sessions touching Ale-houses. CHAP. VII.

§. I.  
Inns and  
Ale-houses  
their use.

THE true and principal use of Inns, Ale-houses, and Victualling-houses, is two-fold; *sc.* either for the Receipt, Relief, and Lodging of wayfaring people travelling from place to place about their necessary business, or for the necessary supply of the wants of such poor persons as are not able by greater quantities to make their provision of Victuals: and is not meant for entertainment and harbouring of leud or idle people, to spend or consume their money or time there, (as appeareth by the Preamble of the Statute made 1 *Jac. Reg. c. 9.*)

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"But abuses crept in, and disorders multiplied by the increase of them, as was perceived so long since as 11 H. 7. c. 2. whereby power was given to two Justices of Peace to lessen their number; yet the mischief arising by their increase and licentiousness growing every day more considerable, a good and profitable Law was made 5 & 6 E. 6 c. 25. for the redress of that general inconvenience without working that reformation that was desired and intended.

And therefore to prevent the mischiefs and great disorders happening daily by the abuses of such houses, his said Majesty of late famous Memory, and our now gracious Sovereign Lord King *Charles*, have graciously been pleased that divers good and profitable Laws should be made for the redress thereof, as followeth:

1 J4. 9: Every keeper of Tavern, (keeping also an Inn or Victualling in his house) and every Ale-house-keeper, Inn-keeper, and Victualler, which shall suffer any Townsman, or any Handicraftsman, or Labourer, working in the same City or Town, to remain and continue drinking in their said house, (except such as shall be invited thither by a Traveller, and shall accompany him during his necessary abode there; and except Handicraftsmen, Labourers and Workmen, in Cities, Towns Corporate and market Towns upon the working-day, for one hour at dinner-time to take their diet there, or sojourning or lodging there; or except they be allowed by two Justices of Peace) the said Offence being seen by any Justice of Peace within his Limits, or being confessed by the Offender before the Justice of Peace, Mayor or Bailiff, or Head-Officer, or being proved before any Justice of Peace by one Witness upon Oath; every such Taverner, Ale-house-keeper, &c. shall forfeit for every such offence 10 s. to the use of the poor. §. 2.

And note, that the voluntary Confession (before the Justice of Peace, or other person authorized to minister the Oath) of any Offender against either of the Statutes of 1 Jac. cap. 9. or 4 Jac. cap. 5. shall suffice to convince the person so offending; and after such Confession, the Oath of the party so confessing shall be taken, and be a sufficient proof against any other offending at the same time. 21 Jac. Reg. cap. 7.

1 Jac. 9. If any Taverner (keeping also an Inn, or Victualling in his house,) or any Inn-keeper, Ale-house-keeper, or Victualler, shall at any time utter or sell within his house, or without, less than one full Ale-quart of the best Beer or Ale for 1 d. and of the small two quarts for 1 d. (the said Offence being proved before any Justice of Peace, &c. by one Witness upon Oath) then every such Taverner, Inn-keeper, &c. shall forfeit for every such Offence twenty shillings, to the use aforesaid. 1 Car. 1. c. 4.

And yet note, That wheresoever any Conviction shall be before the Justice of Peace, by or upon the Oath or Testimony of any other person than the Delinquent himself, there the Justice of Peace must first send for or convent the Delinquent before him, to make answer, &c. and to hear and examine him of the Offence, &c. for it may be, that he can make sufficient defence or excuse of the Fact. And this was the direction of Sir *Nicholas Hide*, Lord Chief Justice of the Kings-Bench, and well agreeth with the Rule here before, chap. 2. *Qui aliquid statuerit, parte inaudita altera, Aequum licet statueret, haud æquus est.*

"Note that the St. 1 Jac. 9. is made perpetual by 21 Jac. 7. and yet the Statute of 21 Jac. 28. amongst 57 other Statutes recites the title of the Statute 1 Jac. 9. doth continue the same with other Statutes untill the end of the first Session of the next Parliament, so that unless the Statute of 21 Jac. 7. doth perpetuate it, it is expired for ought I find.



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And yet whereas by the Statute of 18 *Eliz.* the order to be taken for a Bastard-Child is appropriated to two Justices of Peace ( one being of the *Quorum* ) in or next unto the Parish where such Child shall be born ; if two such Justices cannot agree upon the reputed Father ( or in making such Order as the Statute requireth, or in other Execution of that Statute ) *Quare* what is to be done. I have known the Case lately moved to the Judges of Assize, who thought it fit, that such difference between the two Justices of Peace should be referred to the hearing of the whole Bench, and the matter to be re-examined by them ; and what order should be therein set down by the Bench, the same to stand good. *Vide tit. Bastard.* *18 El. 3.*

But in such things appropriate to some one or more Justices of the Peace, if, without such Justice or Justices, all ( or any of ) the residue of the Justices of that County shall intermeddle therein, such their doings seem no wayes warrantable, but such their proceeding to be *Coram non Judice*, and that there is no necessity to obey them therein, as being no lawful Judges of the Cause.

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And therefore to prevent the mischiefs and great disorders happening daily by the abuses of such houses, his said Majesty of late famous Memory, and our now gracious Sovereign Lord King *Charles*, have graciously been pleased that divers good and profitable Laws should be made for the redress thereof, as followeth:

1 Jac. 9.  
21 Jac. 7.  
1 Carol 4.  
Every keeper of Tavern, (keeping also an Inn or Victualling in his house) and every Ale-house-keeper, Inn-keeper, and Victualler, which shall suffer any Townsman, or any Handicraftsman, or Labourer, working in the same City or Town, to remain and continue drinking in their said house, (except such as shall be invited thither by a Traveller, and shall accompany him during his necessary abode there; and except Handicraftsmen, Labourers and Workmen, in Cities, Towns Corporate and market Towns upon the working-day, for one hour at dinner-time to take their diet there, or sojourning or lodging there; or except they be allowed by two Justices of Peace) the said Offence being seen by any Justice of Peace within his Limits, or being confessed by the Offender before the Justice of Peace, Mayor or Bailiff, or Head-Officer, or being proved before any Justice of Peace by one Witness upon Oath; every such Taverner, Ale-house-keeper, &c. shall forfeit for every such offence 10 s. to the use of the poor. §. 2.

And note, that the voluntary Confession (before the Justice of Peace, or other person authorized to minister the Oath) of any Offender against either of the Statutes of 1 Jac. cap. 9. or 4 Jac. cap. 5. shall suffice to convince the person so offending; and after such Confession, the Oath of the party so confessing shall be taken, and be a sufficient proof against any other offending at the same time. 21 Jac. Reg. cap. 7.

1 Jac. 9.  
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If any Taverner (keeping also an Inn, or Victualling in his house,) or any Inn-keeper, Ale-house-keeper, or Victualler, shall at any time utter or sell within his house, or without, less than one full Ale-quart of the best Beer or Ale for 1 d. and of the small two quarts for 1 d. (the said Offence being proved before any Justice of Peace, &c. by one Witness upon Oath) then every such Taverner, Inn-keeper, &c. shall forfeit for every such Offence twenty shillings, to the use aforesaid.

And yet note, That wheresoever any Conviction shall be before the Justice of Peace, by or upon the Oath or Testimony of any other person than the Delinquent himself, there the Justice of Peace must first send for or convent the Delinquent before him, to make answer, &c. and to hear and examine him of the Offence, &c. for it may be, that he can make sufficient defence or excuse of the Fact. And this was the direction of Sir *Nicholas Hide*, Lord Chief Justice of the Kings-Bench, and well agreeth with the Rule here before, chap. 2. *Qui aliquid statuerit, parte in-audita altera, Equum licet statueret, hand equus est.*

"Note that the St. 1 Jac. 9. is made perpetual by 21 Jac. 7. and yet the Statute of 21 Jac. 28. amongst 57 other Statutes recites the title of the Statute 1 Jac. 9. doth continue the same with other Statutes untill the end of the first Session of the next Parliament, so that unless the Statute of 21 Jac. 7. doth perpetuate it, it is expired for ought I find.

§. 3. *Tiplers.* Every person that shall continue drinking in any Inn or Ale-house, &c. <sup>4 Jac. 5.</sup> <sup>21 Jac. 7.</sup> in the Town where he then dwelleth, (contrary to the former Statute made *primo Jac.*) the said Offence being seen by any Justice of Peace, or being proved before any Justice of Peace, as aforesaid, such persons shall forfeit for every such Offence three shillings four pence.

If any other person (wheresoever his or their habitation or abiding be) <sup>1 Ca. 4.</sup> <sup>21 Jac. 7.</sup> shall be found (by view of any Justice of Peace, or by his own Confession, or proof of one Witness) to be tipling in any Inn, Ale-house or Victualling-house, every such person shall be adjudged to be within the said Statutes of <sup>1 Jac. cap. 9.</sup> & <sup>4 Jac. cap. 5.</sup> as if he inhabited and dwelt in the City, Town-Corporate, or other Town or Village, where the said Inn, Ale-house, or Victualling-house is or shall be, where he shall be so found tipling, and shall incur the like Penalty; and the same to be in such sort levied and disposed as in the said Act is expressed concerning such as there inhabit. And the voluntary Confession of such an Offender shall suffice to convince himself; and, after his Oath, shall be a sufficient proof against any other offending at that time. <sup>21 Jac. cap. 7.</sup>

“He that confesseth the fact, and thereby is convicted, his Oath shall be “a sufficient proof against any other. <sup>21 Jac. 7.</sup>

“Now these Statutes seem to prohibit, not only the continuing drinking ‘in those Inns and Ale-houses, &c. for longer time then for the necessary ‘abode; but also all Tipling there, *viz.* the vain use of quaffing and ‘drinking of Healths there, &c. For these houses were not ordained, ‘neither are they to be suffered, for any such uses; but only for the necessary harbouring and relief of Travellers, and to supply the wants of the ‘Poor, as aforesaid.

§. 4. Every Taverner (keeping also an Inn or Victualling in his house,) and every Ian-keeper, Ale-house-keeper, and other Victuallers, which shall suffer any person (wheresoever his dwelling or abiding be) to tipple in the said house contrary to the true intent of any of the said former Statutes, shall be adjudged within the Stat. <sup>1 Jac. cap. 9.</sup> <sup>1 Carol. 4.</sup>

So that now by these Statutes, no person may come to tipple in any such Tavern, or in any Inn, Ale-house, or Victualling-house, in the same Town where he dwelleth, nor dwelling within two miles thereof, except he be a Traveller: And so Sir Francis Harvey, Knight, delivered it in his Charge at *Cambridg* Summer Assize, *An.* 1629. ‘But the Stat. <sup>21 Jac.</sup> & <sup>1 Carol.</sup> ‘seem to forbid all Tipling in such houses, wheresoever they be dwelling ‘or abiding, and by whomsoever it be.

§. 5. *Drunkenness.* Any Justice of Peace in any County (and any Justice of Peace or other Head-Officer in any City or Town Corporate, within their limits) shall have power (upon his own view, Confession of the party, or proof of one Witness upon Oath) to convince any person of Drunkenness, whereby such persons so convicted shall incur the Forfeiture of five shillings for every such Offence, to be paid within one week next after such Conviction into the hands of the Church-wardens of the Parish where the Offence shall be committed, &c. And if the Offender be not able to pay the said sum of five shillings, then he shall be committed to the Stocks for every such Offence, there to remain by the space of six hours. <sup>4 Jac. 5.</sup> <sup>21 Jac. 7.</sup>

And for the second Offence of Drunkenness, every person convicted thereof, as aforesaid, shall be bound with two Sureties in the sum of Ten pounds, with Condition for the Good Behaviour, by any one Justice of Peace, or other Head-Officer aforesaid, (as it seemeth) <sup>21 Jac. cap. 7.</sup> <sup>4 Jac. 5.</sup> <sup>21 Jac. 7.</sup> and for want of such Sureties to be sent to the Gaol.

‘Every



"Every Constables, Church-wardens, Headboroughs, Tithing-men, Ale-conners and Sidemen shall in their several Oaths incident to their several Offices be charged to present the Offences contrary to that Statute 4 Jac. 5. and so likewise to present Offences against 1 Jac. 9. and 4 Jac. 5. 21 Jac. 7.

"No person shall be impeached or molested for any offence against that Statute, unless he shall be thereof presented, indicted, or convicted within Three moneths after the Offence, and shall be but once punished for each Offence, 4 Jac. 5.

Now, for to know a Drunken man the better, the Scripture describeth them to stagger and reel to and fro, Job 12. 25. Eisa. 24. 20. And so where the same legs which carry a man into the house cannot bring him out again, it is a sufficient sign of Drunkenness.

1 Jac. 9. P. 6. Every Justice of Peace (within his limits) hath Authority to minister the said Oath to such witnesses. 21 Jac. cap. 7.

4 Jac. P. 5. 21 Jac. 7. 1 Jac. 9. All and every the Forfeitures aforesaid shall be to the use of the Poor of the Parish where such Offence shall be committed; and the said Forfeitures are to be levied by Distress and Detainer of the Offenders goods, (and after six dayes by Sale thereof, &c.) by the Constables or Church-wardens of the same Parish, upon a Warrant from any one or more Justices of Peace, under his or their Hand and Seal. §. 6. The Forfeitures.

The said Forfeitures of the Taverner, Ale-house-keeper, Inn-keepers and Victuallers, being distrained for as aforesaid, if within six dayes next ensuing they shall not pay the said Forfeiture, then may the Constables or Church-wardens, by virtue of the said Warrant, presently apprise and sell the said Distress; but they must deliver the surplussage to the party of whom the Distress was taken. 1 Jac. 9. P. 7.

1 Jac. 9. P. 7. For every Offence aforesaid, the Ale-house-keeper, Inn-keeper, and other Victualler, for want of sufficient Distress to be taken for such Forfeitures, shall (by any one Justice of Peace) be committed to the common Gaol, there to remain untill the said Penalty be paid.

4 Jac. 5. 1 Jac. 9. 21 Jac. 7. Every Townsman, or other person whatsoever, &c. that shall continue drinking, or be found tippling in any Inn, Ale-house, or other Victualling-house, contrary to the Statute, and he being convicted of it according to the Statute of 1 Jac. 9. (for want of sufficient Distress, and not being able to pay the said Forfeiture of Three shillings four pence) shall be set in the Stocks forever such Offence four hours, (upon Warrant or commandment from any one such Justice of Peace.)

1 Jac. 9. If the Constable and Church-wardens shall neglect to levy, or shall not levy the said several Forfeitures of Ale-house-keepers, &c. suffering tippling in their houses, or for their Measure of Ale or Beer; or in default of Distress shall neglect by Twenty dayes to certifie the same defaults of Distress to the Justice of Peace; then every such Constable and Church-warden shall forfeit for every such default 40 s. to the use of the Poor, to be levied by Distress (of the Offenders goods,) by like Warrant to any other indifferent person, from any one (or more) Justices of Peace, &c. under their Hand and Seal: the said Distress to be taken and detained for the said Forfeiture for the space of Six dayes; within which time if payment be not made, then the same Goods to be presently apprised and sold, and the Surplussage to be delivered to the party, &c. And for want of sufficient Distress, such Constables and Church-wardens to be (by any such Justice of Peace, &c.) committed to the common Gaol, there to remain untill they have paid the same Forfeiture. And §. 7. Defaults or neglect of Officers.

\* Also

‘Also if any Constable, or other inferior Officer of the Parish, shall neglect to execute the Justices Warrant for the due correction of, or for the levying of the Penalties of Offenders in Drunkenness; such Constable, &c. shall forfeit 10s. to the use of the Poor, &c. to be levied as aforesaid.  
4 Jac. 5.

§. 8.  
Refusing  
to lodge.

If a common Inn-holder or Ale-house-keeper will not lodge a Travel-  
ler, any Constable (or Justice of Peace) may compell him thereto; but how the Officer shall compell him *Quere*; it seemeth that all the Officer can do, is, either to cause such Ale-house-keeper to be suppressed; or else to present or prefer such Offence of an Inn-keeper, or Ale-house-keeper, at the Assizes, or Sessions of the Peace, that so such Offender may be thereupon indicted. See the Commission.

Br. Ace  
Sur. 92.  
& 76.  
5 E. 4. 3.

And at a Lent Assizes, Anno Domini 1622. Sir James Ley (Knight and Baronet, Lord Chief Justice of the Kings-Bench) delivered it in his charge, that an Inn-keeper, or Ale-house-keeper, offending herein, might be indicted, fined and imprisoned for the same; or else, that the party grieved might have his Action *sur le Case* against the Inn-keeper or Ale-house-keeper refusing to lodge him. *Vide Gro. 30. & 4 H7. 22.*

But an Inn-holder, Ale-house-keeper, or other Victualler, shall be compelled to sell or let any Traveller or other to have any Victuals or Lodging, except the party shall first tender and pay ready money for the same, if it be required. 10 H. 7. 8. 5. E. 4. 3. 6. 9. 87. 6.

§. 9.  
Two Justices.  
Licence.

Any two Justices of Peace (the one being of the *Quorum*) may allow the keeping of any common Ale-house, or Tipling-house, and shall (from time to time) take Bond with Surety by Recognizance of such Ale-house-keepers, as well against the using of unlawful Games, as also for the keeping of good rule and order in their Houses, according to the discretions of the same Justices. 5 Ed. 6. 25.  
P. 2.

And yet note that the words of the Statute do not warrant the Justices of Peace to allow Ale-house-keepers at their pleasure; but the words of the Statute are thus, None shall be admitted to keep a common Ale-house, &c. but such as shall be allowed in open Sessions, or by two Justices the one of the *Quorum*, &c. And therefore if two such Justices out of the Sessions shall allow more then are needful, or such as are disabled, or such as have been suppressed; the Justices may be punished, the rather for that the number of unnecessary Ale-houses are causes of much disorder, poor labouring-men and servants resorting thither, and there mis-spending both their money and time.

There shall be paid for such Recognizance but xij. d. and the said Justices shall certify the same Recognizance at their next Quarter-Sessions (upon pain of five Marks.) *Idem.*

Any two Justices of Peace (the one being of the *Quorum*) may remove, discharge, and put down any Ale-house where they shall think meet. 5 E. 6. 25.

“The Justices of Peace in their Sessions by Presentment, Information or otherwise at their discretion may inquire of such persons as be allowed to keep Ale-houses, and that be bound by Recognizance if they have done any Acts whereby they have forfeited their Recognizance, and upon such Presentment or Information shall award Process to shew cause why they should not forfeit the same, and shall hear and determine the same in such manner as by their discretion shall be thought fit. 8 & 6 E.  
6. 25.

The Ale-house-keeper put down and discharged by any two such Justices of Peace cannot be allowed again by any other two or more Justices of Peace, except it be in open Sessions, as Sir Peter Warburton delivered in his charge at Cambridge Assizes, Anno Dom. 1613. Any

5 E. 6. c. 25. Any two Justices of the Peace (the one being of the ~~Quorum~~) may s. 10. commit to Prison in the common Gaol (for three days without Bail) those that keep common Ale-houses, or that use common selling of Ale or Beer, obstinately of their own Authority, without allowance by two such Justices, or contrary to the commandment of two such Justices. And the said two such Justices (before the delivery of such Offenders) shall take Recognizance of them with two Sureties, that he or they shall keep no more a common Ale-house, or use commonly selling of Ale or Beer, according to the Discretion of the same Justices; and shall certify such Recognizance, Discharge, and Offence, at their next Quarter-Sessions: which Certificate shall be a sufficient Conviction in Law of the same Offence, without any farther tryal thereof to be had: and for such Offence the fine of xx s. shall be assessed in open Sessions. "In places where Forces are kept, any person may use common selling of Beer as hath been used. 5 & 6. E. 6. 25. "3 C. 3.

But for that this former Law made 3 Ed. 6. hath not wrought such reformation as was intended, it is farther enacted by another Statute made 3 Caroli Regis, cap. 3. That if any person shall upon his own authority (not being thereunto lawfully licensed) take upon him, or her, to keep a common Ale-house, or Tipling-house, or shall commonly use selling of Ale, Beer, Cider, or Perry, that every such person for every such offence shall forfeit twenty shillings to the use of the Poor of the Parish where such Offence shall be committed; the same Offence being viewed by any Justice of Peace, Mayor, or other head-Officer of any City or Town Corporate, within their limits, or confessed by the Offender, or proved by the Oath of two Witnesses. One Jus-  
tice.

3 Car. 3. Every such Justice of Peace (or other head-Officer aforesaid) have power to minister an Oath to such Witnesses.

3 Car. 3. Also every such Justice (and other head-Officer aforesaid) within their several limits, may make their Warrant to the Constables or Church-wardens of the Parish where the said Offence shall be committed, to levy the same twenty shillings by Distress of the Offenders Goods; and for default of Satisfaction, within three days next ensuing, the said Distress to be appraised and sold, and the overplus to be delivered to the Offender: and this to be only for the first Offence. *Ibidem.*

3 Car. 3. If such Offender shall not have sufficient Goods whereby to levy the said twenty shillings by Distress, or shall not pay the said twenty shillings within six days after such Conviction, then the said Justice (and other head-Officer aforesaid) shall commit the said Offender to the Constable where the Offence shall be committed, or the Party apprehended, to be openly whipped. *Ibidem.* 1 Offence.

3 Car. 3. If the Constable, &c. shall neglect to execute the said Warrant, or do refuse, or do not execute upon the Offender the said punishment of Whipping, the said Justice (or Officer) may commit the Constable, &c. to the common Gaol without Bail, untill the said Offender shall be by him punished as aforesaid, or untill the said Constable, &c. shall pay forty shillings to the use of the poor of the Parish. *Ibidem.*

3 Car. 3. The unlicensed Ale-house-keeper, for such his second Offence, shall be 2 Offences, committed to the House of Correction for one month. *Ibidem.*

3 Car. 3. And for every such Offence after, he shall be committed to the House of 3 Offences, Correction, there to remain untill he be delivered by order from the General Sessions. *Ibidem.*

3 Car. 3. Provided that such Offenders shall not be punished twice for the same Offence, *sc.* shall not be punished both by the Statute made, An. 5 E. 6. and by this Statute of 3 Caroli Regis. If



If a Feme Covert against the will of her Husband, shall keep an Ale-house, or shall use common selling of Ale or Beer without License, &c. the Husband is punishable therefore, and it seemeth the Wife also (by the discretion of the Justices of Peace) may be imprisoned for such her personal and wilful Offence, untill she shall find Sureties for her Good Behaviour, and that she shall no more use the same.

Also it seemeth (by the Letter of the Statute) that the Ale-house-keeper put down or discharged by two such Justices, if (contrary to their commandment) he shall use common selling of Beer or Ale again, though allowed by two other Justices of Peace out of the general Sessions, yet the two Justices that first discharged him may put him down again, and may commit him to the Gaol, for selling contrary to their commandment. 5 E. 6. P. 1. 4.

And yet the Statute alloweth common Victualling, and selling of Ale or Beer in Fairs, though unlicensed, &c. 3 *Caroli* 3. 5 E. 6. P. 5.

\* Brewers uttering or delivering any Beer or Ale to any unlicensed Ale-house-keeper, shall forfeit for every Barrell vi s. viij d. 4 *Jac.* c. 4.

If any Ale-house-keeper which is not licensed, shall suffer Townsmen or any other persons to tipple in his house, or shall break the Affize, &c. he is punishable for the same by the Statute made *primo Jac.* Re. c. 9. and besides he may also be committed to prison for three dayes by force of the Statute made 3 *Ed.* 6. c. 25. or 3 *Caroli* 3. for selling Beer, &c. without License. Also if any Townsman, or other person, shall be found to be tippling in any unlicensed Ale-house, such persons (as it seemeth) are also punishable by the same Statute, made *primo Jacobi Regis* cap. 9.

Any two Justices of Peace may give allowance to Labourers, &c. for urgent and necessary occasions to remain in an Inn, Ale-house, or Victualling-house. 1 Jac. 9.

§. II.  
Inn-keepers that  
suffer Tippling.

Common Inns are appointed for Travellers and wayfaring men, Co. 8. 32. Co. 8. 32. and therefore if any Inn-keeper shall suffer persons inhabiting in the same Town or any other persons (contrary to the Statutes) to be usually tippling in his house, such an Inn-keeper may be accounted as well an Ale-house-keeper as an Inn-keeper; and such Inn-keepers may be bound by Recognizance with Sureties for keeping of good Order, and observing Affize, as Ale-house-keepers are: and so Judge Warburton delivered it in his Charge at *Cambr.* Affizes *An. Dom.* 1613. And therewith also agreed Sir James Ley and Sir John Doddridge, in their several Charges at *Camb.* Affizes, *An. Dom.* 1621. for that such Inn-keepers (said they) do pervert the end, for which they were first appointed. Or else it seemeth they may be dealt withall, *sc.* punished, or committed, as Ale-house-keepers without License, (by two Justices of Peace, as aforesaid:) Or they may be indicted therefore at the Affizes or Sessions of Peace, as it seemeth by the Commission of the Peace.

\* Jo. Brakey de, &c. Inn-holder, &c. convicted for letting his Beer to farm to his Tapster for fourteen shillings the Barrell, he paying but Eight shillings to the Brewer. *Ord.* 2. Sept. 9 *Jac.* Sef. Pa. Mid.

\* It was the Opinion of the Court in the Case of one T. Jennings, That the keeping of an Inn gave no warrant to sell Beer without other License. *Ord.* 6. Jan. 1 *Car.* lib. Sef. Pa. Mid.

Also it hath been agreed for Law, That such Inns as have been erected since the Statute of 3 *Ed.* 6. cap. 25. and were not Inns before, ought to have License; and that such Inn-keepers are to be bound by Recognizance, with Sureties, for keeping of good Orders, as Ale-house-keepers are. from 77

And

And yet at *Lent Affizes, Anno Dom. 1621.* Sir *James Ley* delivered in his Charge, That Inns were Hosteries by the Common Law, and that every man might erect and keep an Inn or an Hostery, so as they were *probi homines*, men of good conversation, fame and report, and dwelling in meet places: but yet that they were not worthy of any allowance or License under the Kings Great Seal, &c.

And he delivered farther in his said Charge, That if such Inns or Hosteries be used *ad nocumentum populi Domini Regis, &c. sc.* do keep any disorderly house contrary to the Law, or be more in number then are needful, and to the hindrance of other ancient and well-governed Inns; that then they may be thereof indicted at the Affizes, or Sessions of the Peace, and there may be either fined or suppressed. And Sir *James Ley* told me after at his Lodging in *Trinity-Colledg*, That this was the Opinion of all the other Judges, upon late Conference had among themselves.

But such Inns or Hosteries, if they shall be inconvenient or disordered, in respect either of the Inn-keeper, or of the resort thither, or that the place be unmeet, they are to be suppressed, upon an Indictment found at the Affizes or Sessions.

An. 1616.

And if they shall suffer Townsmen or other persons (usually) to tippie there, they are to be punished as Ale-house-keepers without License: for these Inns or Hosteries are to be allowed onely for Travellers.

His Majesty, in his late speech in the Star-Chamber, hath justly excepted against the abundance of Ale-houses, and more specially against the infamous and blind Ale-houses, as being haunts and receits for Robbers, Thieves, Rogues, Vagabonds, and other Idle, loose and sturdy Fellows, who loyter and enquire in these places where they may have a Booty, or do a mischief to the neighbouring Inhabitants: And therefore here I thought good to put the Justice of Peace in mind, that in allowing of Ale-houses they have regard as well to the person, as the place; for all persons, especially infamous or defamed, are not fit to be allowed for Ale-house-keepers, neither are all places meet for an Ale-house.

7 E. 6. 5.

“And therefore Ale-houses to be allowed are meetest to be about the midst of the Town; but not to be in any blind or by-Corners (much less in woods or places remote from Towns) where Thieves and Rogues may be harboured: nor in places out of or distant from the Town; except upon the River side and where there is great need, and the persons well known. *Resol. 36.*

“The keeping of Taverns, Ale-houses or Tipling-houses, by Bailiffs, Sergeants or other Minister is found generally mischievous, for when they Arrest any person upon pretence of Favour, they carry them to their own houses, and there lodge and entertain them so long time as their money lasts, and then and not before carry them to Prison; whereby both the party arresting is many times defrauded of his debt, and the person arrested under colour of liberty cheated of his money, and at last left to perish in a Gaol, and therefore have I known many of these suppressed in the Kings-bench; And, as I remember, a rule of Court was made, that none such should be licenced, which is a worthy example for other Justices of Peace to observe, to prevent which inconveniencies an Act of Parliament was made 22 & 23 *Car. 2d.* whereby is provided, if any under-Sheriff, Bailiff, Sergeant, or other Officer shall by virtue or colour of any Writ, Process or Warrant, have any person in custody, such Officer shall not carry or convey, or cause, &c. the said persons to any Tavern, Ale-house, or Victualling, or drinking-house, without his voluntary consent, so as to charge him with any sum or sums of money

§. 12.  
What persons are fit to be allowed.

§. 13.  
Places fit for Ale-houses.

Bailiffs.

"money for any thing there, but what he shall call for, nor take any reward for keeping such person out of Gaol then the party will freely give, nor take any more for each nights lodging or expences then is reasonable, or shall be adjudged by the next Justice of Peace, or at the Quarter-Sessions to pay for any thing else then what the party calls for.

*The Person.*

As if the party be in a Livery, or a retainer to any man, Bailiff of a Hundred or Liberty, Constable, &c. or be one that is not of good fame, conversation or Government; such persons are not fit to be allowed to be Ale-house-keepers. See *Fitz. N. B.* 172. That no Victualler ought to sell Victual so long as he is in Office, &c. Stat. 12 Ed. 2. c. 6.

Again *dicitur*, that no person, using any Trade, ought to be allowed to keep an Ale-house, for that were to take away the means, and so the life of another. *Tamen quere inde*, for that by the Common Law no man is prohibited to use divers Trades. *Vide hic tit. Labourers.*

'*T. Byworth* suppressed from keeping an Ale-house, for that it appeared to the Court that he is a Steel-forgers, which is a good Trade, sufficient for him to live by *Ord. Sess. Pac. Mid.* 26 Jul. 8 Car. which see to resolve the *quer.* aforesaid.

Also there are some persons that by Law are disabled to keep an Ale-house (at least for a certain time;) as,

1. The Ale-house-keeper convicted for any Offence against 1 Jac. 9. & 4 Jac. 5. or being convicted. (according to the Statute *vicefimo primo* 7 Ja. 10. 21 Ja. 7.) for suffering Townsmen, &c. (or any other person, as it seemeth) to continue drinking in his house, contrary to the said Statute, (which see here before) such Ale-house-keeper is disabled to keep an Ale-house for three years after such Conviction. 21 Jac. cap. 7.

2. So the Ale-house-keeper convicted (as aforesaid) for not selling one 7 Ja. 10. full quart of the best Beer or Ale for *j d.* and of the small two quarts for *j d.* (which see in this Title a little before) such Ale-house-keeper also is disabled (for three years after) to keep an Ale-house. 21 Jac. cap. 7.

3. The Ale-house-keeper that shall continue drinking in another Ale-house or Inn in the same Town where he dwelleth, (the said Offence being seen by any Justice of Peace within his limits, or being proved before any Justice of Peace by two Witnesses upon Oath) every such Ale-house-keeper also is disabled for three years after such Conviction to keep any Ale-house, as it seemeth upon conference of these two Statutes of 4 & 7 Jac. 21 Jac. 7. 4 Ja. 5. 7 Ja. 10. 21 Ja. 7.

So the Ale-house-keeper that shall be drunken, and thereof lawfully convicted, (by Indictment at the Assizes, Sessions of Peace, or in a Leet, or otherwise before the Justice of Peace) is disabled for three years to keep an Ale-house. 4 Ja. 5. 7 Ja. 10. 21 Ja. 7.

An Ale-house-keeper convicted and suppressed for any of the former Offences, if he shall be licensed or allowed again by two or more Justices of Peace within three years, such License is void, and he is to be punished as one victualling without License. And so it was delivered by Sir Nic. Hyde, at Cambr. Assizes, An. 3 Caroli Regis. And so it seemeth, if he were convicted, though he were not suppressed, if he be after licensed again within three years after such Conviction, such license is void, &c.

5. The Ale-house-keeper that is discharged or put down by any two Justices of Peace, the one being of the *Quorum*, &c. is also disabled, so as he cannot be allowed again, except in open Sessions. See *hic antea.*

Also in Towns which are no thorough-fare, the Justices shall do well to be sparing in allowing of any Ale-house, except it be at the Suit of the chief



chief Inhabitants there, and to supply the necessary wants of their Poor :) and then Kanikets (only to sell to the Poor, and out of their doors) would suffice, if they were enabled by a Law.

## Affray. CHAP. VIII.

**A**ffray 'is in our Law a Skirmish or Fighting between two or more : §. 1.  
'and is' derived of the French word *Effrayer*, which signifieth to terrifie, or bring fear; and which the Law understandeth to be a common wrong. And therefore I will shew you what every man may do in such cases. *What and whence.*

Every private man being present before, or in and during the time of an Affray, ought to stay the Affrayors, and to part them, and to put them asunder, but may not hurt them if they resist him; neither may he imprison them, for that he is but a private man. *§. 2. Every private man.*

An Affray being in the street, if any other shall come with harness or weapon to joyn with either Party, every person present, or that seeth it, may stay them till the Affray be over.

*Lamb. 134* Also every private man (being present) may stay the Affrayors untill their heat be over, and then may deliver them to the Constables to imprison them till they find Surety for the Peace: But yet it seemeth the Constable may not imprison the Parties, except the Affray were in the Constables presence. *Hic, cap. 1.*

*3 H. 7. c. 1. Br. Coron. 225. 10 H. 7. 20.* If any person be dangerously hurt in an Affray (or otherwise) every person may arrest the Offender, and carry him to the Gaol, or to a Justice of Peace, (who is either to bail him untill the next Gaol-delivery, or to commit him to the Gaol, untill it be known whether the Party hurt will live or die thereon.) *Br. Faux impris. 35. 44.*

The Constable in such Cases is armed with a more large Authority within his Jurisdiction; for he may and ought in the Kings name to command the Affrayors, or such as are about to make an Affray, to avoid or surcease, and to depart (upon pain of imprisonment:) and if the Constable (being present at an Affray) doth not his best endeavour to part them, it being presented by Enquest at the Sessions of the Peace, such Constable shall be deeply fined for it. *See more chap. 1.* *§. 3. The Constables.*

But where the Affray is made out of the presence or sight of the Constable, and one cometh to the Constable and telleth him of it, and wisheth him to go and see the Peace kept, and the Constable doth nothing, but neglecteth his duty therein, it seemeth he shall not be fined by the Justices at their Sessions, upon Presentment thereof by the great Enquest, *Cro. 146. Quere tamen, & vide hic, cap. 1, & 5. the Commission, & 121. the Form of the Constables Oath.*

*3 H. 7. 10. Lam. 135.* If the Affrayors will not depart, but shall draw Weapon, or give any Blow, the Constable may command assistance of others for the pacifying of the Affray, and may justifie the hurting of them, if they make resistance.

*Lam. 135.* The Constable may in the Kings name make Proclamation (if the Affray be great or dangerous) that the Affrayors shall keep the Kings Peace and depart, &c.

*Lam. 136.* Also if the Affray be great and dangerous, then the Constables may command the Affrayors to Prison for a small time, till their heat be over; yea, they may imprison the Affrayors till they find Sureties for the Peace. And if any of the Parties hath received any dangerous hurt in the Affray, the

the Constable ought to arrest and carry the Offenders to the Gaol, (or to a Justice of Peace) to the end they may find Sureties to appear at the next Gaol-delivery; and the Constable may justify the beating, &c. of such an Offender, if he will not obey the Arrest, but make resistance, or flie.<sup>38 E. 3. 8. & 11. Br. Faux imp. 6.</sup>

- §. 4. Note, that it is properly no Affray unless there be some Weapons drawn, or some Stroke given, or offered to be given, or other attempt to such purpose; for if men shall contend only in hot words, this is no Affray: neither may the Constable for words only lay hands upon them, unless they shall threaten to kill, beat, or hurt one another, and then may the Constable arrest such persons (to go before some Justice of Peace, to find Sureties for the keeping of the Peace;) and yet such threatening is no Affray.<sup>Hic cap. 1.</sup>

- §. 5. <sup>Pursuit.</sup> If the Affray be in an house, and the doors shut, the Constable may break into the house, to see the Peace kept, though none of the Parties have taken any hurt.

If the Affrayors flie into another mans house, the Constable (in fresh suit) may break into the house, and apprehend the Affrayors, 7 E. 3. 19.

If the Affrayors flie into another County, the Constable (or Justice of Peace) seeing this, may in fresh suit pursue, or cause them to be pursued, and to be taken there; but they can then meddle no farther but (as every private person may do) to carry them before some Justice of Peace of the County where they are taken, to cause them to find Surety for the Peace.<sup>Plo. 37. Crompton 146. b. & 172. b.</sup>

But if the Affrayors flie into a Franchise within the same County, the Constable (or Justice of Peace) seeing this, may in fresh suit pursue and take them out of such Franchise.<sup>Crompton 246.</sup>

After the Affray (it seemeth) the Constable, without a Warrant, cannot arrest the Affrayors, except some person be in peril of Death by some hurt there received.<sup>38 H. 8. Br. F. imp. 6.</sup>

- §. 6. <sup>The Justice</sup> Every Justice of Peace may do that which every Constable or private man may do by the Common Law herein.

Besides, every Justice of Peace (within his limits) may presently after the Affray commit the Offenders, untill they have found Surety for the Peace, if the Affray were in his presence. And if the Affray were not in his presence, yet upon complaint, or upon his own discretion he may after make his Warrant to take or commit such Offenders, untill they have found Surety for the Peace. *Vide tit. Peace & Surety for the Peace.*<sup>9 Ed. 4. 3. Cromp. 195, 196.</sup>

If an Affray be made in the presence of a Justice of Peace, he may lay hands upon and arrest the Offenders to find Sureties for the Peace, and may take away their Weapons, 21 H. 7. 22. b. *Moor.*<sup>Br. Faux imp. 12, & 33.</sup>

And yet by some Opinions, the Justice of Peace in cases of an Affray, to some purposes, hath no farther Authority then every private man hath: for though the Justices of Peace (sitting in their Sessions, or out of their Sessions) may command a man to be attached, who shall make an Affray in their presence, (and of such things done in their presence they make a Record, and certify the same, which shall be a Conviction of the Offender) and the Justice of Peace may presently upon the fact command or send such Offenders to the Gaol; yet the Justices cannot themselves attach or arrest any man (say they) for any Affray, or other thing done in their presence, (no more than a stranger or private person may do;) but after the Affray they may make or grant out their Warrant to attach or arrest the Offenders, and may then commit them to the Gaol, except they shall find Sureties for the Peace.

Every

Every Justice of Peace ( in his own discretion, and *ex officio* ) may bind all such to the Peace as in his presence shall strike another, or shall threaten to hurt another, or shall contend only in hot words. *Vide tit. Sureties for the Peace.*

P. Just. 173.  
10 H. 7. 20.  
Crompt. 154.  
If any person be dangerously hurt in any Affray ( or otherwise, ) every Justice of Peace, within the year and day after such hurt, may commit to the Gaol such Offenders, there to remain untill the day and year be expired, or that the said Offenders shall find Sureties to appear at the next General Gaol-delivery, to answer to the Felony, if the party hurt, happen to die within the year after the hurt. *Vide Stat. 3 H. 7. cap. 1.* 'And by 'Gods Law' Exodus 21. 18, 19. *If the party happen to recover, the Offender shall pay to the party hurt for losing his time, and also for his healing.* §. 7. Dangerous hurt.

But where the hurt shall be dangerous, or wound mortal, although the Justice may bail the Offender, living the party so hurt; yet it shall be better discretion for the Justice to commit the Offender to the Gaol, there to remain, untill there shall appear some good hope of recovery in the other: And so Sir Nicholas Hyde advised at Cambridge, Lent Assizes, Anno 5 Car. Regis.

'And by the Stat. *de officio Coronatoris* 3 or 4 E. 1. upon Appeal of 'Wounds, and such like, especially if the Wounds be mortal, the parties 'appealed shall be taken immediatly, and kept till it be known perfectly 'whether the party hurt shall recover or not; and if he die, the Offender 'shall be kept; and if he recover, he shall be attached by four or six 'Pledges, as the Wound is great or small: and if it be for a Maim, the 'Offender shall find no less than four Pledges; if it be for a small wound 'or maim, two Pledges shall suffice. *Ibid.*

§ H. 7. 6.  
Br. Faux  
imp. 41.  
If an Affray or Assault shall be made upon a Justice of Peace or a Constable, they may not only defend themselves, but may also apprehend and commit the Offenders, untill they have found Sureties for the Peace: the Justice of Peace may presently cause them to be arrested, and carried before another Justice, who may send them to the Gaol: and the Constable must commit them to the Stocks for the present, and after carry them before a Justice of Peace, or to the Gaol. *Vide hic postea.*

# Armour. CHAP. IX.

2 E. 3. c. 3.  
P. 1.  
7 R. 2. 13.  
20 R. 2. c. 1.  
IF any person shall ride or go armed offensively before the Kings Justices, or any other the Kings Officers or Ministers doing their Office, or in Fairs, Markets, or elsewhere, ( by night or by day ) in Affray of the Kings people, ( the Sheriff, and other the Kings Officers ) and every Justice of Peace ( upon his own view, or upon complaint thereof ) may cause them to be staid and arrested, and may bind all such to the Peace or Good behaviour, ( or, for want of Sureties may commit them to the Gaol : ) and the said Justice of Peace ( as also every Constable ) may seize and take away their Armour and other Weapons, and shall cause them to be apprised, and answered to the King as forfeited. And this the Justice of Peace may do by the first *Assignavimus* in the Commission. See hereof *antea*. §. 1. One Just.

Lam. offic.  
of a Const.  
13.  
So of such as shall carry any Guns, Daggs, or Pistols that be charged, or that shall go apparelled with privy Coats or Doublets, the Justice may cause them to find Sureties for the Peace, and may take away such Weapons, &c. *Vide tit. Surety for the Peace.*

2 E. 3. c. 3.  
Co. 5. 72.  
20 R. 1. 1.  
And yet the Kings Servants in his presence, and Sheriffs, and their Officers, and other the Kings Ministers, and such as be in their company assisting them in executing the Kings Process, or otherwise in executing of their §. 2.



their Office, and all others in pursuing Hue and Cry, where any Felony or other Offences against the Peace be done, may lawfully bear Armour or Weapons.

Also it seemeth that any Justice of Peace may command that Weapons be taken from such Prisoners as at any time shall be brought before him.

Also if any Servant to Husbandry, or to any Artificer, or Victualler, or any Labourer, shall bear any Buckler, Sword or Dagger, (except they be travelling with their Master, or in their Masters messlage) it seemeth every Justice of Peace may imprison them till they have found Sureties for the Peace, and may seize and take away their said Weapons, (or may cause the Constable to seize the same as forfeit) and present the said Weapons at the next Sessions of the Peace. But this Statute seemeth now to be repealed by the Statute made 21 Jac. 28.

And yet, by the first *Assignavimus* in the Commission, the Justice of Peace may do it, especially if he suspect any breach of the Peace to be intended by them.

# Barrator. CHAP. X.

§. 1. **B**arrator cometh from the French *Barrat*, *id est*, *astutia*, and in that Tongue betokeneth a Deceiver. In our Law a Barrator is a common Wrangler that setteth men at odds, and is himself never quiet, but at Brail with one or other. Dr. Cow. & Minsh.

Every Justice of Peace (upon his discretion) may bind to the Peace, or Good Behaviour, such as are common Barrators.

Also a common Barrator is he who is either a common Mover and Stirrer up (or maintainer) of Suits in Law in any Court, or else of Quarrels or parties in the Country. Co. L. 368.

§. 2. **In Courts.** As if in any Court of Record, County-Court, Hundred, or other inferior Courts, any persons by fraud or malice, under colour of Law, shall themselves maintain (or stir up others unto) multiplicity of unjust and feigned Suits or Informations (upon penal Laws,) or shall maliciously purchase a special *Supplicavit* of the Peace, to force the other party to yield him Composition; all such are Barrators.

§. 3. **In the Country.** In the County; and these are of three sorts.

1. Disturbers of the Peace, *viz.* such as are either common Quarrellers or Fighters in their own cause; or common Movers or maintainers of Quarrels and affrays between others.

2. Common Takers or Detainers (by force or subtilty) of the possessions of houses, lands, or goods, which have been in question or controversies.

3. Inventers and Sowers of false Reports, Whereby discord ariseth, or may arise, between neighbours. All these are Barrators. Co. 8. 35.

Yea, if one be *Communis Seminator litium*, he is a Barrator. West In-dict. 75. 76.

Or if any man of himself be *Communis Oppressor vicinorum*, (a common Oppressor of, or Wrangler with, his neighbours or others) either by unjust or wrangling Suits, or other oppressions or deceits, he is a Barrator.

Or if one be *Communis Pacis Perturbator, Calumniator, & Malefactor*, he is a Barrator. Cromp. 237.

§. 4. But all such persons must be common Barrators, *sc.* not in one or two, but in many causes. Co. 8. 37.

A feme covert cannot be indicted of common Barretry, and an Indictment against one for that offence was quasht. T. 16 Jac. Rolls Rep. part 2.

p. 39.

" I. A

- “1. A man convicted of common Barretry shall be punished by Fine and Imprisonment, and may be bound to the good behaviour. 34 E. 3. c. 1. §. 5. Punishment
- “2. An Indictment was *Communis Barretror*, where it should have been *Barretrat* and quashed for that fault, &c. 20 Jac. Alports Case. §. 6. Indictment
- “3. And although Barretry be an offence of a complex nature made up of several acts, yet a place must be laid where the offence was committed for the necessity of tryal. *Rolls rep.* 1 part p. 295. The King against *Wells*.
- “4. Barretry is of a mixt nature, and the Justices of Peace cannot take an Indictment, and fine, and punish the Offender barely by vertue of the Commission of the Peace, but in respect of the clause therein to hear and determine Felonies, &c. And a case was H. 17 Jac. Where a man being indicted of Barretry at the Sessions, brought a *Cerciorari*, and an indictment was certified *capta rerum* &c. *Justic. Dom. Regis ad pacem*, but *ne non ad diversa*, &c. was left out, and for that cause the *Cerciorari* was quashed. *Rolls rep.* 2 part p. 151. §. 7. Cerciorari
- “5. Suing one in anothers name is a species of Barretry, and thereby 8 El. c. 2. He that causeth or procureth another to be arrested or attached in any action at the Suit, or in the name of another, where there is no such person known, or without his consent, upon conviction by two witnesses shall be imprisoned six moneths without bail, and before delivery shall pay Ten pounds with treble costs and damages to the party to be recovered by action of debt, &c. in any Court of Record. §. 8. Suing in anothers name

## Bastardy. CHAP. XI.

‘**B**astardus est qui nascitur ante matrimonium, Co. L. 243. It cometh of the French word *Bastard*, i. e. *Nothus*: and yet *Bastardus est trilex*; *Manser*, incestuose natus, Co. L. 244. *Nothus*, natus ex patre nobili, & matre ignobili, sc. *Concubina*; *Spurius*, natus ex matre nobili, & patre ignobili. A Bastard is *Terra filius*, though his Mother be known. §. 1.

‘*Cui pater est populus, pater est sibi nullus & Omnis.*

‘*Cui pater est populus, non habet ille patrem.*

‘Much more of Foundlings, where neither Father nor Mother are known.

Lam. 122.  
Crom. 196

Every Justice of Peace (upon his discretion) as it seemeth may bind to the Good behaviour him that is charged or suspected to have begotten a Bastard-child, to the end that he may be forth-coming when the Child shall be born; otherwise there will be no putative Father, when the two Justices (after the birth of the Child) shall come to take order according to the Statute of 18 El. c. 3. The like may be done after the birth of the Child, and before such order taken. §. 2.

Also if the putative Father of any such Child, either before the birth of the Child or after, shall, by any perswasion, procurement or other practice, be conveyed or sent away, or shall run away, so as the Justice of Peace cannot come by him, or so as the Order of the Justices, by means thereof, shall not be performed; it seemeth every Justice of Peace, upon his discretion, may bind to the Good behaviour, and so over to the next general Gaol-delivery, (before the Judges of Assize) or to the next Quarter Sessions, such as shall have any hand in such practice, &c. And such Offenders may by the discretion of the Justices, (at their General Sessions) be ordered to contribute towards the maintenance of the said Bastard-child. And so of Constables, which having received a Warrant from the Justice

'to apprehend the reputative Father, shall willingly or negligently suffer him to escape; or fine them'. So such as by practice, &c. shall cause the Mother of the Child to be conveyed or sent away, or to run away, whereby she leaveth her Child to the charge of the Town, &c.

§. 3.  
Two Ju-  
stices.

Order.

Two Justices of Peace (one being of the *Quorum*) in or next to the limits where the Parish-Church is, in which Parish any Bastard-child (be gotten and born out of lawful Matrimony) shall be born, upon Examination of the cause and circumstances, shall and may take order by their discretion as well for the relief of the Parish (in part, or in all) and keeping of the Child, (by charging the Mother or reputed Father with the payment of Money weekly, or other relief,) as also for the punishment of the Mother and reputed Father. 21 Jac. c. 28. & 3 Caroli. 5.

18 Elc. 31  
P. 2.

But such a Bastard-child must be one that is left to be kept at the charge of the Parish, or one likely to be (or which may be) chargeable to the Parish. See the Stat. of 18 Eliz. and the Stat. 7 Jac. cap. 4.

where Ses-  
sions may  
make an  
order.

"The Justices of the Peace in Sessions could not before the Statute of

Cro. 13.  
Ca. p. 337.  
Slavers  
Case.

"3 Car. 1. c. 4. meddle with the Settlement of or provision for a Bastard-

"Child according to 18 Eliz. c. 3. untill the two next Justices had made

"some order therein, and after such order made by the two next Justices,

"the Sessions might proceed therein to make a new order, but now by

18 El. 3.  
3 Car. 4.

"3 Car. 1. c. 4. the Justices in Sessions have power originally to make an

"order therein.

"And if the two next Justices of Peace make an order according to 18

H. 9. C.  
Cr. p. 248.  
& 225.  
Pridgions  
Case.

"Eliz. c. 3. and the party appeals from that Order to the next Sessions, and

"they alter, or discharge, or confirm that Order, any other Sessions cannot

"order any thing contrary thereto; for the Order upon the Appeal is

"small, as is an Appeal upon the Statute of Charitable Uses, and the Sta-

3 Ca. 4.

"tute of 3 Car. 4. That giving authority to Justices of Peace in Ses-

"sions, is to be understood where the next Justices have made no order

"therein.

Appeal.

"A Man is charged to be the reputed Father of a Bastard, by order of

"two Justices, he appeals to the Sessions, and prays a day to another

"Sessions to bring in his Proofs, besides giving day, nothing is done;

"and if the Court might hear him, and give relief at another Sessions, was

"the doubt; and it was referred to the Justices of Assize. And *Walter*, Chief

"Baron, upon consideration of the Statute of 18 Eliz. Resolved, That

"the next Sessions after, the two Justices order must relieve him, or none

"else could. *Gittens* and *Edwards* case. Summer Assize in Sar. 5 Car. And

"so it was resolved B. R. *Mich. 6 Car. 1.* In *Smyths* case against the

"the Parish of *Blackthorne*, in *Com. Oxon.*

"The reputed Father, by the Law of God, was to give unto the Maids

"Father *Fifty shekels of Silver*, and he also was to take her to his wife. *Exod.*

"22. 16. and *Dent. 22. 28, 29.* wherewith agreeth the *Canon 67. Apostol.*

"*Quam quis violaverit virginem, ducat in uxorem.*

If the two Justices cannot agree upon their Order, what is then to be

7 Jac. 5.

done, see *Hic. antea, c. 6.* But by some opinions the words of this Statute be-

ing (disjunctive) two Justices of Peace in or next to the limits, &c. if the two

Justices of Peace in that division or limits cannot agree, then the two Justices

of Peace, next to that division or limits, (being in the same County, and one

of them of the *Quorum*) have power to take order therein.

Also it seemeth the Mother may be examined upon Oath concerning the reputed Father, and of the time, and other circumstances; for that in this case, the matter and the trial thereof dependeth chiefly upon the Examination and Testimony of the Mother. *Vide hic cap. 66. & Lamb. 517.*

By



By the Stat. 7 Jac. it appeareth that the Justice of Peace shall now commit such leud Woman to the House of Correction, there to be punished, &c. And therefore *quare* if the Justices of Peace may not punish (by corporal punishment) the Mother by force of this Statute of 18 Eliz. 3. and then send them to the House of Correction: for the Rule of Law is, *Nemo debet bis puniri pro uno delicto*; and the Divine saith, *Deus non agit bis in idipsum*. Co. 4. 43. & 8. 118.

But such corporal punishment or Commitment to the House of Correction, is not to be untill after that the Woman is delivered of her child, neither are the Justices of Peace to meddle with the Woman untill that the child be born, (and she strong again) lest the Woman being weak, the child wherewith she is, happen to miscarry: For you shall find; that about 31 Eliz. a Woman great with child, and suspected for incontinency, was commanded (by the Masters of *Bridewell* in London) to be whipped there, by reason whereof she travelled, and was delivered of her child before her time, &c. And for this the said Masters of *Bridewell* were in the Star-Chamber fined to the *Queen* at a great Sum, and were farther ordered to pay a sum of Money to the said Woman.

And as for the reputed Father, the two Justices shall do well, (as I conceive) if he be of ability, to charge him the more deeply; which if he refuse, then with punishment according to the Stat. of 8 Eliz. See for this purpose an Order in such case here, Chap. 121. And if the reputed Father be of small ability, and shall not find friends to yield some reasonable allowance, then to undergo the more punishment.

18 Eliz. 3. §. 5.  
R. 1. After such Order by two such Justices subscribed under their hands, if the said Mother or reputed Father, upon notice thereof, shall not perform the said Order, then such person so making default shall be committed to the Gaol, there to remain without Bail or Mainprise; except such parties shall put in sufficient Sureties to perform the same Order, or else personally to appear at the next General Sessions of the Peace in that County, and to abide such Order as the Justices of Peace, or the more part of them, then and there shall take in that behalf, (if they shall take any) or in default thereof, then to abide and perform the Order before made.

*Nota que Enfant nee per 11. dies post ultimum tempus legitimum mulieribus constitutum, (sc. post 40. Semains apres mort son Pere,) ne serra adjudge legitimum puerum, &c. Co. L. 123. 2 Esd. 4. 40, 41. Et issint semble de Enfant nee apres 40. Semains del temps que Feme charger Home daver carnal Connissance de luy, tiel Enfant ne serra adjudge ne repute estre le issue de tiel Home.*

7 Jac. 4. Every leud Woman which shall have a Bastard which may be chargeable to the Parish, the Justices of Peace shall commit such Woman unto the House of Correction, there to be punished daily, for therefore she is sent thither, (as I conceive) and set on work for one year, and to live of her own labour; and if she shall afterwards offend again, then to be committed to the House of Correction, as aforesaid, and there to remain untill she can put in good Sureties for her Good Behaviour not to offend so again. See c. 118.

Now it seemeth that such Commitment to the House of Correction ought to be by two Justices at the least, (by the words of this Statute;) and then by the conference of these two Statutes (of 18 Eliz. and 7 Jac.) it seemeth fittest for the two next Justices authorised by 18 Eliz.

It seemeth also (by the words of this Statute 7 Jacobi) that such a Woman shall not be sent to the House of Correction untill after the child be born, and that it be living; for it must be such a child as may be chargeable to the Parish.

Also it seemeth that such a Bastard child is not to be sent with the Mother

ther the House of Correction, but rather that the Child should remain in the Town where it was born, ( or settled with the Mother ) and there to be relieved by the work of the Mother, or by relief from the reputed Father. See to this purpose the Resolution of the Judges, *Resol. 6.* in the Title *Rogues*. And yet the common opinion and practice is otherwise, *sc.* to send the Child with the Mother, to the House of Correction: and this may also seem reasonable where the Child sucketh on the Mother. *Vide plus cap. 6. fine, & cap. 40. Resol. 7. & Quere.*

A Maid-servant gotten with child, where she shall be settled; *see chap. 40. & Resol. 12, & 21.*

Putative Fathers and leud Mothers of Bastard-children leaving their children upon the Parish, the Church-wardens and Overseers for the Poor of the Parish, where the child was born, may seize and take so much of the Goods and Chattels, and of the Rents and Profits of the Lands of such reputed Fathers or Mothers, as shall be ordered by two Justices of the Peace, for and towards discharge of the Parish, for providing for such Bastard; and by order of the Sessions may sell the said Goods, or so much thereof as the Court shall think fit, and to receive so much also of the Rents and Profits of the Lands, for the said purposes, as shall be ordered by the Sessions. "The punishment of such as shall kill their Bastard-children, see *postea tit. Felony* by Statute.

#### Bailment. CHAP. XII.

§. 1. BY the Common Law, the Sheriff and every Constable (being Conservators of the Peace) might have bailed a suspect of Felony: but this Authority seemeth to be taken from them, and given to the Justices of Peace, by the Statutes following. Lamb. 13

First, by the Statute 1 R. 3 cap. 3. every Justice of Peace had Authority ( by his discretion ) to let to Bail, persons imprisoned for suspicion of Felony, &c.

Two Ju-  
stices.

But forasmuch as after the making of that Statute, divers not beingailable were notwithstanding let to Bail, and so, many notable Felons escaped; therefore this Statute was repealed by the Statute of 3 H. 7. and thereby any two Justices of Peace ( the one being of the *Quorum* ) were enabled to let any prisoners (mainpernable by the Law) to Bail, to the next General Sessions of the Peace or Gaol-delivery, as the case should require. After, for that one Justice of Peace, in the name of himself and of one other of his fellow-Justices, ( not making the other Justice privy unto the cause, whereof the Prisoner should be bailed ) did oftentimes by sinister means set at large great and notable Offenders, such as were notailable, and yet, to hide their affection therein, did signifie the cause of their apprehension to be but only for suspicion of Felony, whereby the said Offenders have escaped unpunished; for reformation thereof, by the Statute 1 & 2. P. & M. it was enacted, That if it be for Man-slaughter, or Felony, or suspicion of Man-slaughter or Felony, ( 'beingailable by Law' ) then the same Justices must be present together at the time of the said Bailment; and that they must certifie ( in writing subscribed with their own hands ) the said Bailment at the next General Gaol-delivery, to be holden within the County where the person shall be arrested or suspected, upon pain to be fined by the Justices of Gaol-delivery. 3 H. 7. c. 3.  
Fitz. N. B.  
251. f.  
1 & 2 P. &  
M. cap. 3.  
P. Just.  
107.

One Ju-  
stice.

Now by the Preamble of both the last recited Statutes, the mischief seemeth to be the escape of Felons; and therefore if it be not in case of Felony,

Felony, it seemeth any one Justice of Peace alone may bail a Prisoner; (see the Titles, *Affray, Dying and Surety for the Peace*: except where some particular Statute shall otherwise prescribe, as in *titulo Counterfeiters*. See more of *Bailment hic postea*.

- 23 H. 6. 10. "Sheriffs, under-Sheriffs, Coroners, Stewards, Bailiffs, Keepers of Pri- <sup>One Jar</sup>  
sons and other Officers shall let out of Prison all persons by them arrested <sup>fi.c.</sup>  
"or being in their Custody by force of any Writ, Bill or Warrant in any  
"Action personal, or by cause of any Indictment of Trespas upon reaso-  
"nable Sureties of sufficient persons within that County to keep their day  
"as such Writs, Bills or Warrants require; Except persons arrested by  
"Cap. Utlagat. or Excommunication or Surety of the Peace, or committed  
"to ward by special commandment of any Justices or Vagabonds, or shall  
"pay the party treble damages and forfeit Forty pounds, a Moyety to the  
"King, the other to the profecutor, and the Justices of Peace have power  
"to hear and determine.

*Bankrupt.* CHAP. XIII.

- 21 Jac. 19. "IF any *Bankrupt* shall upon his Examination be found to have fraudu- <sup>§. 1.</sup>  
lently conveyed away Goods, Chattels, Lands, Tenements, Offices, <sup>Punishment</sup>  
"Fees, or any his Estate to the value of Twenty pounds or more, to the <sup>of falshood,</sup>  
"end to hinder the Execution of the Statute, or to delay his Creditors of  
"the same, and shall not upon his examination discover, and if it be in his  
"power deliver a particular thereof to the Commissioners, or that cannot  
"make appear to them some casual loss, whereby he is disabled to pay  
"what he owed, may be indicted for the same at the Sessions of the Coun-  
"ty, or place where he becomes a *Bankrupt*, and being thereof convi-  
"cted, be set in the Pillory for two hours, and have one of his ears nailed  
"to the Pillory and cut off.

*Bowes and Arrowes.* CHAP. XIV.

- 7 H. 4. 7. "Justices of Peace in their Sessions have power to hear and determine <sup>§. 1.</sup>  
"all offences against the Statute of 33 H. 8. c. 9. touching the use,  
"ordering and having of Bowes, and by their discretion to examine all  
"persons lacking and not having Bowes, Shafts and Arrowes according to  
"the former of that Statute. The several branches, whereof inasmuch as  
"Bowes are now out of use, I have forborn to abridge.  
"All heads for Arrowes shall be well boiled or brased and hardned at  
"the points with steel, and if any do contrary, they shall forfeit them to  
"the King and make fine at the Kings will, and Justices of Peace shall in-  
"quire of their offences, and punish them as aforesaid.  
"See also the Statute of 8 El. 10. touching Bowes.

*Brewers and Bakers.* CHAP. XV.

- "A Baker that observeth not the Assize of Bread, shall be put into the <sup>§. 1.</sup>  
"Pillory and shall not be redeemed thence for Silver or Gold.  
31 H. 1. c. 7.  
"A Brewer that breaks the Assize of Ale or Beer, shall for the first <sup>§. 2.</sup>  
"and



"and second offence be amerced, and for the third offence put in the Pillory without redemption. 31 H. 1. c. 7.

"There is a good Law made 23 H. 8. c. 4. that no Brewer shall be a Cooper, and for setting the prices: but the Justices of Peace have nothing to do therein as is resolved *Cro. 4. Car. 1. libro meo. p. 79.* as suing for the penalties: but Justices of Peace out of Corporations, and in them the Mayor and second Officers may Assess the price of Ale and Beer.

"See the penalty of a Brewer selling Beer to an unlicenced Ale-house, *tit. Ale house. & 1 Jac. 181.*

"A Brewer that Brewes Beer with corrupt Hops, or mixt with powder, dust or other soil, forfeits the value of the Hops. 1 Jac. 18.

## Bridges.

## CHAP. XVI. V. XIII.

S. I.  
Four Ju-  
stices.

Where a decayed Bridge is, and that it cannot be proved who nor what lands be chargeable to the repairing thereof, four Justices of Peace (whereof one to be of the *Quorum*) within the Shire or Riding wherein such decayed Bridge is, (out of Cities and Towns Corporate; and if it be within a City or Town Corporate, then four such Justices of Peace there) may within the limits of their several Commissions call before them the Constables, or two of the most honest Inhabitants of every Town and Parish within the Shire, Riding, City or Town Corporate, wherein such Bridge or any parcel thereof shall happen to be; and the said Justices (upon the appearance of such Constables or other Inhabitants, and with their assent) may tax every Inhabitant in any such City, Town, or Parish (within their limits) to such reasonable sum of money as by their discretions they shall think convenient, as well for the repairing of such Bridge, as also for the making and repairing of any High-ways lying next adjoyning to the end of any such Bridge within this Realm, distant from either of the ends of the Bridge by the space of Three hundred foot.

Tax:

After such Taxation made, the said Justices of Peace shall cause the names and Sir-names of every particular person, so by them taxed, to be written in a Roll indented. P. 2.

Collectors.

Also the said Justices shall make two Collectors of every Hundred, for the collecting of all such sums of Money, by the said Justices set and taxed; which Collectors receiving the one part of the said Roll indented under the Seals of the said Justices, shall have power thereby to collect all the particular sums of Money therein contained, and to distrain such as shall refuse to pay the same, and to sell such Distress, delivering to the owner the *over-plus* of the Money, if there be any. P. 3.

Also the said Justices shall appoint two Surveyors, which shall see such decayed Bridges and ways repaired and amended from time to time, as often as need shall require; to whose hands the said Collectors shall pay the said sums of Money by them received. P. 4.

The said Collectors and Surveyors, and their Executors and Administrators, and every of them, shall from time to time make a true Account to the said Justices of Peace of the receipts, payments and expences of the said sums of Money; and if any of them refuse so to do, then the said Justices of Peace from time to time (by their discretions) may make out Process against the said Collectors and Surveyors, their Executors and Administrators, by Attachments, Precept, or Warrant, under their Seals, returnable at their General Sessions of the Peace. Ibid.

Also

*Ibid.* Also the said four Justices of Peace may allow such reasonable costs and charges to the said Surveyors and Collectors, as by their discretions they shall think convenient.

*P. 12.* If any such Bridge shall lie wholly in a City or other Corporate Town, the Inhabitants of the Shire or Riding shall not be charged therewith, but such Bridge shall be made and repaired by the Inhabitants of such City or Town-Corporate. §. 2.  
who shall  
be charged.

*P. 4.* If any such Bridge be without a City or Town-Corporate, the same shall be made and repaired by the Inhabitants of the Shire or Riding within which the same Bridge shall be.

*Ibid.* If part of any such Bridge be in one Shire, Riding, City or Corporate-Town, and part in another, then every of them shall be charged to make and repair such parts as shall lie and be within their limits, &c.

*Magna Charta 15. P. ti. Wears 1.* But otherwise no Village or Free-men shall be compelled to make any Bridge but such as of old time and by right they had wont to make, and that they and their Ancestors have used time out of mind to make the same, or that they hold certain Lands to make the same: for though a man of his own accord hath made or amended a Bridge, yet shall he not be thereto constrained at another time; and yet if a man and his Ancestors, or a Corporation, &c. have time out of mind used to do such things, although they did it of their own free mind and accord, and not of right, nor have any Land by reason whereof they may be tied, yet such continuance shall conclude them and their Heirs or Successors. And so of High-ways, *21 Ed. 4. 46.*

*F. Grants. 94. 41 E. 3. 31. 21 E. 4. 46.* Also there is a Writ in the Register directed to the Sheriff, willing him to cause such to whom it belongeth, to repair a Bridge, or repair High-ways, &c. *Reg. Orig. fol. 153, 154.*

Where a man and his Ancestors or Predecessors have used time out of mind to repair a Bridge, the King cannot acquit or discharge them thereof. *Fitz. Gr. 94.*

Where it is presented that *I. S. ratione tenuræ sue* hath used to repair such a Bridge, this implieth a Prescription. *21 E. 4. 38. Crom. 186.* §. 3.  
Prescripti-  
on.

But a Presentment that *I. S.* and his Ancestors have used to repair such a Bridge, this is no good Prescription to charge the Heir (by the act of his Ancestor) without any profit to be taken therefore. *27 Aff. 8. Cromp. 187.* See the next Case but one.

Otherwise it is of a Corporation Spiritual or Temporal: they by reason of usage time out of mind, &c. may be charged at this day to repair a Bridge, although they have no Land by reason whereof to be charged, for that such a body never dieth. *Ibid.*

Also where a man hath once repaired a Bridge, and that afterwards the same was not repaired within the memory of man, by some Opinions, he, or they which have his Estate in Land, shall be bound to repair the Bridge; for that it shall be supposed to have been done at the first by reason or cause of his Tenancy, except some other particular cause of the doing thereof shall be proved: but where the cause shall appear, there, *cessante causa, cessabit effectus.*

*B. Bridges 1.* He that hath his Land adjoining to such a Bridge, is not chargeable to make or repair the bridge, except where they have made it by Prescription. *8 H. 7. fol. 5. b.*

*Cro. 186. b. & 187. b. \* 37 Aff. pl. 10. per Green.* By common right Bridges shall be amended by the whole County, for that it is for their common good and ease; and yet if any have Fishings or other profit in that River, they in Reason and \*Law (as it seemeth) are chargeable; and therefore the Justice of Peace in good discretion may tax such proportionably to their profit. Where

Where Men are charged by their Tenure or Lands, every owner or occupier of such Lands are to be charged proportionably to their said Lands. *Vide tit. Sewers, and Fitz. 235 b.*

Such as are chargeable to repair a Bridge, may enter upon any other Mans Lands or Soil adjoining, and may lay their Stone, Lime, Timber, or other things necessary for the repairing and amending thereof, and the owner of the Lands shall have no Action therefore; for it is for the common profit, &c. 43 Aff. 37. *Fitz. Affize, 353.* Co. 11. 32.

Yea, where one is chargeable to repair a Bridge, he must also maintain the way at each end thereof, (though the Soil be to another;) and if the ends be broken by the Water-course, he must follow the Water-course, and repair the Way, &c. *Crompt. 186 b.*

If a Man maketh a Bridge for easment to his Mill, and that decayeth, the party nor any other shall be charged to repair this; for it is no common passage. *Fitz. Bar. 276.* Cro. 187.

Defects of Repair of Bridges shall be presented in the County only, where they lie, and no Presentment nor Information shall be removed before Traverse and Judgment thereupon. 22 Car. 2.

§. 6. *us.* Where Lands are given to the maintenance of Bridges, the Feoffees and Trustees shall let the same at the most improved Rent without Fine; if such Trustees make default, the Justices of Peace in their open Sessions may inquire of the value thereof, and may order the Improvement and Employment thereof, 22 Car. 2.

#### Particular Laws touching particular Bridges. CHAP. XVII.

§. 1. **F**OR Ten years the Justices of Peace in *Chester* and *Lancaster*, upon presentment of the Grand Jury at their Sessions, the major part being six, at least, may by Warrant under their Hands and Seals, to erect any new Bridge or Bridges in such place of the Highway, which any River crosses, and to repair such as have been demolished during the Wars, and charge the County or any Hundred, to the Building and Repairing thereof, to be levied as Money for Bridges usually is, 22 Car. 2.

§. 2. The Justices of Peace in *Monmouth*, may within Ten years, or any Six, *Quorum duo*, in their Sessions to levy Money for the repair and amendment of *Usk* and *Basalegg* Bridges, so as in any one year it exceed not 40 *l.* to be levied and accounted for, as Money for Bridges is in that County. 22 Car. 2.

#### Burials. CHAP. XVIII.

§. 1. **N**O Person shall be buried in any Shirt, Shift, or Sheet, made of, or mingled with Flax, Hemp, Silk, Hair, Gold, or Silver, or any other but such as shall be made of Wooll only, or be put in any Coffin lined or faced with Flax, Hemp, Silk, or Hair, upon pain to forfeit 5 *l.* to the poor, for raising a Stock to set them on work, to be levied by the Church-Wardens and Overseers, or any of them, by Warrant from any Justice of Peace, Major, Alderman, or Head-Officer, by Distress and Sale of the Goods of the Party Interred, or in default thereof of the Goods of any having a hand in putting the Party thereunto, 18 Car. 2. cap. 4.



*Butcher.* CHAP. XIX.

31 Hen. 1. c. 7. **A** Butcher that sells Swines Flesh Measled, or any Flesh that dies of the Murrain, shall be fined 3; and for the second offence put into the Pillory. §. 1.

A Butcher that slits or cuts an Ox-hide, or any Hide, forfeits 20 d. He that sells a putrified Hide, forfeits 3 s. 4 d. and kills Beef to sell under two years, or Calf under five weeks, 6 s. 8 d. for every day, by 1 Jac. 22. But the Clause, as to Calves, is repealed by 22 & 23 Car. 2. Penalty for killing or selling Victuals on the Sabbath-day. *Vide Tit. Sabbath.* §. 2.

He that buys fat Oxen, &c. and sells them again alive, forfeits every Ox, &c. so bought, 2 & 3 Edw. 6. cap. 17. See 15 Car. 2. cap. 8. *Postea.* Tit. *cattle.* §. 3.

*Butter.* CHAP. XX.

14 Car. 2. c. 26. **T**He Kilderkin must contain 112 l. nete or above, every pound sixteen ounces besides the Cask. Every Firkin fifty six pound, besides the Cask; every Pot of Butter four pounds nete besides the Pot. 14 Car. 2. cap. 26. §. 1. *Contents.*

14 Car. 2. c. 26. No old or corrupt Butter shall be mixed with new or sound Butter, nor Whey-Butter mixed with Cream-Butter, but each sort by it self; and every Cask or Pot shall be of the same, good thorowout. No Butter shall be salted with great, but with small Salt; nor more Salt mixed then is necessary, upon pain for every offence in quantity or quality, the value of the Butter so false packed; and where the Kilderkin, Firkin, or Pot, is not of measure, six times the value of every pound wanting. §. 2. *Mixtures.*

14 Car. 2. c. 26. Every person selling Vessels of Butter, shall deliver the quantities aforesaid, or else make satisfaction to the Buyer according to the price it was sold for.

14 Car. 2. c. 26. Every person repacking any Butter to sell the same again, shall for every Cask or Pot so repacked, forfeit double the value thereof. §. 3. *Packings.*

14 Car. 2. c. 26. Every person packing Butter in Casks, shall put it in good Casks, of dry, sound, and well seasoned Timber; and shall put upon the same, a mark of the just weight thereof, and when filled, put thereon the first Letter of his Christian name and his surname at length, with an Iron-brand, upon pain for not setting the weight or name 10 s. for each C. weight, and so proportionably. §. 4. *Casks.*

14 Car. 2. c. 26. Every Potter shall set the weight of the Pot, and the first Letter of his Christian name and his surname therein, or forfeit twelve pence for every Pot sold for packing of Butter. No person shall pack any Butter in any Pot, but such as is so marked. §. 5. *Marks.*

*Carriages.* CHAP. XXI.

**W**hen occasion shall require, upon notice, by Warrant under the Hand and Seal of the Lord High Admiral, or of two principal Officers or Commissioners of the Navy, or of the Master of the Ordinance, or of the Lieutenant of the Ordinance, of what Carriages are required, Two Justices of Peace, near the place, shall issue out Warrants to such places §. 1. *Carriage for Navy or Ordinance.*

"places as they think fit, not above twelve miles distant from the place of Lading, to send to; and at certain place and time, such number of Carriages with Horses or Oxen sufficient, as is required, the owner or servant to receive Twelve pence for every reputed mile for a Tun of Timber, and Eight pence *per* mile for every Tun of other provisions.

"14 Car. 2. cap. 20.

§. 2.  
*Refusal.*

"Every Person refusing or having undertaken his duty, neglecting or delaying it, upon proof and conviction by the Oath of the Constable, or other Officer, or Oath of two Witnesses, before the said Justices, or Major, or chief Officer of the City or Corporation where they dwell; the party for every such offence shall pay Twenty shillings, which in default of payment, upon demand, to be levied by Distress and Sale by warrant of the Justices, rendering the overplus; the charge of distressing being deducted. 14 Car. 2. cap. 20.

"No Carriages be compelled to travel further, or continue in the service longer then the Justices shall by order direct, and shall receive payment at the place of Lading. 14 Car. 2. cap. 20.

§. 3.  
*Allowance.*

"The Justices of Peace that shall summon any Carriages in *New Forest* for Timber, may allow Four pence *per* mile, for every mile they shall go empty to the place of Lading. 14 Car. 2. cap. 20.

§. 4.  
*Bribes.*

"A Justice of Peace, or other Officer, taking any reward for excuse from service, or grieving any person of ill will, or impressing more then is required upon due proof and conviction, shall forfeit Ten pound, to be recovered by Warrant of Debt in any of the Kings Writs of Record. 14 Car. 2. cap. 20.

§. 5.  
*Carriages for Progress.*

"The Clerk or chief Officer of the Kings Carriages shall three days before his arrival, by warrant from the Green-cloth give notice to two or more Justices of Peace next adjoining, to provide such Carts and Carriages as his Majesty shall have use of, expressing the number, time and place, which shall consist of four able Horses, or six Oxen, or four Oxen and two Horses, for each of which the owner shall receive Six pence *per* mile, and if any shall refuse to provide them for ready money tendered, or refuse to appear, then upon proof by the Constable or Officers Oath, or two witnesses before the Justices of the County, or Mayor, or chief Officer of the City or Corporation where the party Inhabits, he shall forfeit Forty shillings to be levied to the Kings use, by warrant from the said Justices, or Mayor or chief Officer, by distress and sale, rendering the overplus: but none shall go above a days Journey from the place of Lading. 13 Car. 2. c. 8.

§. 6.

"Any two or more Justices next the Road upon notice in writing from the Greencloth, and Avenor, under their hands, shall set down the prices of Hay, Oats, and other accommodations for Horses for such time as His Majesty shall stay there; and one day before His Majesties coming shall proclaim the same in that Town and Village adjoining: And if any take more, upon conviction, by confession or oath of one Witness before any one Justice of Peace, he shall pay to the party Forty shillings, to be levied as above. 13 Car. 2. c. 8.

§. 7.  
*Bribe.*

"If any Justice, Major, Constable, or Officer, shall take any Reward to excuse any Carriage, or shall injuriously, out of malice, charge any who ought not to make such Carriage, or impress more Carriages then be required, he shall forfeit Ten pounds to the party grieved, to be recovered in Debt in any Court of Record. 13 Car. 2. c. 8.

*Cattle.*

## Cattle. CHAP. XXII.

- 5 Edw. 6. 14. "NO Person shall buy any Oxen, Ronts, Steers, Kine, Heifers, Calves, §. 1.  
 "Sheep, Lambs, Goats, or Kids alive, and sell the same again, unless *Selling live Cattle.*  
 "he keep the same five weeks in his own Grounds; or where he hath  
 "Herbage by Grant or Prescription, upon pain to loose double the value  
 "of the Cattle; one moyety to the King, the other to the Informer.  
 5 E. 6. 14. "Drovers Licenced in Writing by three Justices of Peace, *Quorum unus*, §. 2.  
 "may buy Cattle, and sell them again in Fairs and Markets, at reasonable *Drovers.*  
 "prices, distant from the place where bought, Forty miles, at least. So  
 "that such Cattle be not bought by Forestalling.

## Churches. CHAP. XXIII.

- "THE Bishop of the Diocess, where two Parishes lie in a Corporation, §. 1.  
 "with the consent of the Mayor, Aldermen, and Justices of Peace, *uniting.*  
 "Bailiff or Bailiffs, or other chief Officers, or the major part of them;  
 "and the Patrons may by due Order of Law, unite the two Churches or  
 "Chappels, and may appoint where Gods worship shall be performed;  
 "and to that, the Parishioners shall resort, and pay their Tithes, 17 Car.  
 "2. cap. 3.  
 "If any shall strike another in a Church or Churchyard, or draw a §. 2.  
 "Weapon in a Church or Churchyard, with an intent to strike; and be- *striking.*  
 "ing thereof convicted by Verdict, or Confession, or Oath, of two Wit-  
 5, 6 E. 6. 4. nesses before, (amongst others) the Justices of Peace in their Sessions,  
 "shall be adjudged to have one of his Ears cut of; and having no Ears,  
 "then shall be burned in the Cheek with an hot Iron, having the Letter F.  
 "But an Indictment alone with an Outlawry upon it, is not such a Con-  
 5, 6 E. 6. 4. viction as to inflict the corporal punishment required by this Act.  
 "A Man takes up a stone in a Churchyard, and offers to throw at an- §. 3.  
 "other, or having a Hatchet or Ax in his hand, offers to strike another; *Conviction*  
 "this is not within 5 E. 6. by two Justices; for these are not such Wea-  
 "pons as are drawn as a Sword or Dagger.

## Cloth. CHAP. XXIV.

- 39 Eliz. c. 20. "EVERY Justice of Peace may enter in and upon any Houses, Lands, or §. 1.  
 43 Eliz. c. 20. Grounds, and make search for any Tenters, Wrinches, or other En- *One Ju-*  
 30. gines whatsoever, whereby any deceit may be used in or about the stretch- *rice.*  
 P. Drap. 118, 127. ing of any Woollen Cloth; and may utterly deface the same Tenters, &c. *Searching.*  
 And for the second offence may sell them away to the best value thereof.  
 "But the disposing of such Money shall be by two Justices. See *hic postea.*  
 And if upon Information made to any Justice of Peace, of any such Ten- *Penalty.*  
 ters, &c. he shall not make search and execute this Law within seven days,  
 he shall forfeit for every such default five pounds.  
 P. Drap. 115, 127. Also one or two of the Justices of Peace of the Shire, next adjoining to  
 any City, Borough, or Town-Corporate within *England*, may joyn with  
 them of such City, Borough, or Town-Corporate, in appointing the yearly  
 Overseers for such Cloths, &c. *Ibid.*  
 3 E. 6. 2. Any two Justices of Peace within their limits may once every year appoint §. 2.  
 33 El. 20. Overseers or Searchers for that whole year following, or for a shorter *Two Just-*  
 P. Drap. 45, 115, 118. time, (at their discretions) of any Woollen Cloth, to be made or sold in any *ces.*  
 Town



Town not being Coporate, and may charge them upon their Oaths, and bind them in Recognizance of Forty pound apiece, to do their best endeavors by all lawful ways and means, for their time, to see the Statutes of 3 *Edw. 6. c. 2.* and of 39 *Eliz. c. 20.* in all points truly observed and kept within their limits, (sc. within the Town or Parish where the said Overseers shall be dwelling.) The particulars seem to be these.

§. 3.  
Duty of Overseers.

1. That the Weights, Lengths, and Breadths, of all Woollen Clothes, be according to the Statute 39 *Eliz.* See the Statutes 4 *Jac. c. 2.* & 21 *Jac. cap. 18.* P. Dr. 114.

2. That every such Cloth have a Seal of Lead, containing the just length and weight. 39 *Eliz.*

3. That such be not stretched or strained. *Ibid.*

4. Where there be any Tenters, Wrinches, or other such Engine for the stretching of Cloth. *Ibid.* 21 *Jac. 11.*

5. That no Iron Cards or Pickards, be occupied in any Woollen Cloths. 3 *Edw. 6. c. 2.*

6. That Cloths or Wools be not falsly Died or Coloured. *Ibid.*

7. That no Hair, Flocks, Thrums, Yarn made of Lambs Wool, Chalk, Flower, or Starch, or other deceiveable thing, be put in or upon any Woollen Cloth, upon pain to forfeit for every offence Five pound, to the use "of the Poor of the Parish where such Cloth is made". See 3 *Edw. 6.* & 43 *Eliz. c. 10.* & 4 *Jac. c. 2.* & 21 *Jac. c. 18.*

8. That no Cloths be in any deceiveable manner pressed, to be put to Sale, 3 *Ed. 6.* See also of the Statutes of 3 *Edw. 6. c. 6.* & 21 *Jac. c. 18.*

"The Statute of 3 *Edw. 6.* speaks of Hot-presses, which is a deceitful way of Pressing of Cloths, and is much to its damage, and makes them seem fair to the eye, when they are full of faults, and are dangerous also for fire. As was attested by Cloth-workers in the Kings-Bench. 13 *Jac. Rolls, Rep. 2 part, p. 312.*

§. 4.  
Conviction.

Any two (or more) Justices of Peace within the County, City, Borough, or Town-Corporate, where deceiveable Cloth shall be made, or suspected to be made, (upon Complaint or Information of any Overseer, Searcher, or any other, of any such Offence) may grant their Warrant to call before them any person or persons that in their discretion shall be thought fit to discover any such Offence, and may examine upon Oath any such persons for the tryal and better finding out of the said Offence. And if upon such Examination it shall be found by Testimony of two Wiinesses (or more) or by the Confession of the Offender, that any such offence hath been committed, the same shall be a sufficient Conviction of the offence; and then the said Justices shall or may certifie such offence unto the Church-wardens and Overseers (for the time being) of the Poor of the Parish where such deceiveable Cloth shall be made, under the Hands and Seals of the said Justices; And upon such Certificate, and a Warrant made by the said Justices to the said Overseers and Church-wardens for the levying of the Forfeiture, the said Overseers and Church-wardens, or any of them, or their, or any of their Successors, immediately from and after such Certificate and Warrant delivered to them, or any of them, may levy the sum or sums of Money, which by the said Certificate and Warrant shall appear to be forfeited, by way of Distress and Sale of the Offenders Goods, rendering to the Offender the overplus, &c. and in defect of such Distress, the said two Justices may commit the Offender to the Common Goal, there to remain without Bail, until payment shall be made of the sums so forfeited, to the said Overseers and Church-wardens, or some, or one of them, &c. 21 *Jac. c. 18.* 21 *Jac. 11.*

These

These Overseers, or two of them, shall (or may) from time to time, or once every Moneth, at least, go into all or any Houses, Shops, or other Rooms of any Clothier, Draper, Cloth-worker, or other person where such Cloth shall be, or shall be suspected to be, and there make due search and tryal, &c. 39 Eliz. c. 20. & 21 Jac. c. 18. §. 5.  
The Overseers Duty.

39 Eliz.  
21 Jac. 18. Also the same Overseer shall fix unto every Cloth (by them viewed) a Seal of Lead, containing the length and the weight of every such Cloth, together with this word *Searched*, or *Faulty*, if there be cause, "and shall be viewed, searched, or weighed by none other, upon pain to forfeit "to the party grieved Five pound, to be recovered in the Quarter "Sessions.

P. 15. Also every Overseers of Cloth, appointed by any former Law (now in force) to fix unto any kind of Cloth a Seal of Lead, shall engrave or set upon every their Seals of Lead (which they shall fix upon any Cloth by them to be sealed) his Christian and Sirname: And no Cloth to be sealed with any Seal of Lead which shall want such Ingraving or Print, shall be allowed to be sufficiently sealed, 21 Jac. c. 18.

Also the said Overseers shall seise and carry away as forfeit all such Cloth as upon their search they shall find not to be sealed with a Seal, containing the just length and weight, and shall present the same Cloth to the Justices of Peace at the next Quarter-Sessions of the Peace, 39 Eliz. 20.

And if the said Overseers shall find any false Seal set upon any Cloth, or any Cloth to be stretched or strained, they shall present such Defaults at the said next Sessions, together with the names of the owners of such Cloths. *Ibid.*

But Cloth once lawfully searched, viewed, weighed, and sealed by the Overseers and Searchers of the Parish, Town, or place, where the said Cloths be made, shall not afterwards be viewed, searched, or weighed by any other Person or Officer whatsoever. 4 Jac. c. 2. & 21 Jac. c. 18.

And if the said Overseers shall find any such Tenters, Wrinches, or Engines (for the stretching of Cloth) they shall deface the same; and for the second offence therein, they shall take away the said Tenters, &c. and shall sell the same to the best value thereof, and by the consent of two Justices of Peace shall dispose the Money thereof to the Poor of that Parish. *Vide* 21 Jac. c. 18.

21 Jac. 18. "And if any Person, whose Tenters are defaced, shall offend with them "a second time, he shall forfeit Five pounds, Forty shillings to be to the "uses and in the manner the Five pounds.

If any Person, commanded by two Justices of Peace to appear to be made an Overseer according to this Statute, do (without reasonable excuse) refuse to come and take upon him that Office, he shall forfeit for every such refusal Five pounds, the one half to the King, and the other half to those two Justices; and shall remain in Ward to the Sheriff, until he hath paid the same Forfeiture, or put in Sureties for the same, 39 Eliz. c. 20. §. 6.

P. Drap.  
118.) The Money that shall be made upon the sale of any Tenters, Wrinches, and other such Engines, shall be disposed (to the Poor of the Parish where the said Tenters, &c. shall be found) by the consent of any two Justices of Peace within the same County.

7 Jac. 17. But by the Statute 7 Jacobi, certain Cloths made within the County of Cumberland, Westmerland, and Lancaster, shall not be subject to search, &c. Also by the Statute of 3 Jac. c. 1, 7. Welsh Cottons shall not be searched, nor tried, neither need they have any Seal containing their length or weight.

All Penalties and Forfeitures for want of length, bredth, and weight of Cloth, §. 7.  
The F 1st.

Cloth, limited by any Statute now in force, shall be distributed into three parts equally; whereof one third part shall be unto the Searchers, finding and certifying the same, &c. "To be recovered by them, at, or in the "Quarter Sessions of County, City, or Town Corporate, where the "offence is committed by Debt, Bill, Plaint, or Information." And the other two parts shall be unto the Poor of the Parish where the said Cloth shall be made: The said two parts to be levied by way of Distress, and sale of the Offenders Goods, &c. upon a Warrant from two Justices of Peace, &c. 21 Jac. 18.

§. 8. "And because by the Statute of 21 Jac. all Penalties and Forfeitures, for "want of length, breadth, and weight of Cloths, are under the power "of the Justices of Peace for their direction therein, I shall set down the "same as they are mentioned in the Statutes of 4 Jac. 2. & 25 Eliz. c. 17.

"& 5 Ed. 6. c. 6. & 4, 5 Ph. & Ma. c. 5.

"1. Broad Cloaths, and Cloths of Died-Wool and Mingled-Colours, 4 Jac. 2. "shall contain between 30 & 40 Yards, every Yard, Yard and Inch of the 5, 6 Ed. 6. "Standard, and no more; and in breadth, 6 Quarters and a half of a Yard 4, 5 Ph. & Ma. c. 5, "within the List, and shall be in weight 86 pounds. Ibid.

"2. Long Worcesters, and Cloth of like making between 30 & 33 Ibid. "Yards; and in breadth, 7 Quarters; and shall weigh 78 pounds.

"3. Long coloured Cloths called Plunkets, Azures, and Blews, and Ibid. "long White Cloths, and Cloths of like make, be in length between 29 & "32 Yards; and in breadth, 6 Quarters and a half, and weigh 86 pounds.

"4. Short Cloths coloured, and short White-Cloths called Sorting- Ibid. "Cloths, in length between 23 & 26 Yards; and in breadth, 6 Quarters "within the List, and weigh 64 pounds.

"5. White short *Suffolk*, or Cloth of the like make, shall contain in Ibid. "length between 23 & 26 Yards; and in breadth 6 Quarters and a half, "and weigh 64 pounds.

"6. Every White Cloth of like making, called Handy-Warps, shall Ibid. "contain between 29 & 32 such Yards in length; and in breadth, 6 Quar- "ters, and weigh 76 pounds.

"7. Broad Plunkets, Azures, Blew, and other Cloth of like make, shall Ibid. "contain in length between 26 & 28 Yards, and in breadth 7 Quarters 6 Ed. 6. "and an half, and weigh 68 pounds. 35 El. c. 9.

"8. Short Cloths made of Died or Mingled-Colours in *Yorkshire*, or Ibid. "of like make, between 23 & 25 Yards in length; and in breadth, 6 Quar- "ters and a half, and weigh 66 pounds.

"9. Broad Listed Whites and Reds, called Sorting-Pack-Broad-Listed Ibid. "Cloths, in length between 26 & 28 Yards, in breadth, 6 Quarters and a 27 El. c. 17. "half, and weigh 64 pounds. 5, 6 Ed. 6. c. 1.

"10. Narrow Listed Whites and Reds, called Sorting-Pack-Cloths, 4, 5 Ph. & Ma. c. 5, "length between 26 & 28 Yards, breadth 6 Quarters and an half, and weigh Ibid. "60 pounds.

"11. Fine Cloth with plain Lists, between 29 & 32 Yards, breadth 6 Ibid. "Quarters and a half, and weigh 72 pounds.

"12. Cloths having stnp Lists, and not plain Lists, length between 30 " & 33 Yards, breadth 7 Quarters, and weigh 78 pounds.

"13. Broad Cloth called *Tauntons*, *Bridgwaters*, and *Dunsters*, between " 12 & 13 Yards, breadth 7 Quarters, and weigh 30 pounds.

"14. Narrow Cloth of that Sort, length between 24 & 25 Yards, " breadth one Yard, weigh 30 pounds, the half Cloth to be proportionable.

"15. All such Broad-cloths and Narrow-cloths, made into White and "Red, in *Yorkshire*; the broad to hold the like weight, length, and mea- "sure;



"sure; but the narrow to contain between 17 and 18 Yards of like mea-  
"sure, bredth, and weight, proportionable.

4 Jac. 2. "16. All *Devonshire* Kerfies called *Desfees*, length between 12 & 13  
"Yards, weight 13 *l*.

35 El. 10. "17. *Check* Kerfies, strait and plain Greys, between 12 & 18 Yards,  
"bredth one Yard, weight 24 *l*.

4 Jac. 2. "18. Ordinary Pennistones or Forest Whites, length between 12 & 13  
"Yards, bredth five Quarters and an half weight 28 *l*.

4 Jac. 2. "19. Sorting Pennistones, length between 13 & 14 Yards, bredth six  
"Quarters and an half weight 35 *l*.

4 Jac. 2. "20. Kerfies called *Wasbers* or *Washwhites*, length between 17 & 18  
"Yards half-thicked, and between 18 & 19 Yards, quarter-thicked, and  
"weight 17 *l*.

4 Jac. 2. "21. If longer, then as before directed, the seller to forfeit for every  
"Yard and Inch, Ten shillings. If of less weight, shall forfeit Ten shillings  
"for every pound above two pounds so wanting; and if failing in bredth,  
"to forfeit for every Cloth falling narrow throughout, Twenty shillings,  
"half way Ten, a Quarter of it Five shillings.

4 Jac. 2. "22. A Cloth found in the Parties presence, or upon notice in his ab-  
"sence to be of lesser length, then the Seal fixed imports, the seller shall  
"forfeit to the buyer Six shillings eight pence for every Yard wanting,  
"and the value of so much as is wanting.

35 El. 10. "23. Every raw *Devonshire* Kerfie, or Dozen, being a Rudys Wash  
"Kerfie, shall in the Market weigh 17 pounds raw, as it comes off the Wea-  
"vers Loom, and without racking, shall contain between 15 & 16 Yards;  
"and if of less weight or measure, the Weaver shall forfeit for every  
"Quarter of a Pound Twelve pence; and for every Quarter of a Yard  
"Twelve pence.

"24. Several Forfeitures by the Statute of 35 *Eliz.* 10. may be sued  
"for in any Court of Record, (as the Sessions, &c.)

8 EL. 12. "25. Every Cotton shall weigh 21, at least, and in length 20 or 21  
"Yards, and in bredth 3 Quarters of a Yard, or within one half Nail  
"thereof. Every Frize and Rugg shall weigh 44 *l*. and in length between  
"35 & 37 Yards, and in bredth, at most, 3 Quarters, and, at least, with-  
"in a Nail thereof; and if longer, it shall weigh, as it ought to weigh,  
"proportionably, upon pain, for every Yard, not so weighing, Twelve  
"pence; and if of less weight, the seller to forfeit for every Pound under three  
"Pounds Twelve pence; and for every Pound, lacking above three Pounds  
"Five shillings: One half to the King, the other half to the Informer.

If any person (which shall retail any of the Cloths, Kerfies, Frizes, Rugs,  
or Cottons, of the several makings specified in the Statute 5 *Ed.* 6. cap. 6.)  
do present any such Woollen Cloth which is defective or faulty unto the  
two Justices of Peace next adjoyning, (out of a City, Borough, or Town  
Corporate) where such Cloth shall be found faulty; the same Justices shall  
cause the same Cloth to be cut into three equal pieces, whereof the King  
shall have one, the Presenter another, and the third the said Justices shall  
retain to themselves.

7 Jac. 7. Any two Justices of Peace may take order between the Clothier and his  
Spinsters, Carders, Kembers, Sorters, and Weavers, which shall unjustly §. 9.  
Spinsters,  
&c. Im-  
bezilling  
or deceitfully convey away, imbezil, sell, or detain any part of the Wool  
or Yarn delivered to them: And as well every such Spinster, &c. so of-  
fending, as also the Buyers and Receivers, (knowing the same to be im-  
bezilled) being thereof convicted by the Confession of the Party, or by  
one sufficient Witness upon oath, before two such Justices, shall give such

recompence to the party grieved, for such their loss and damage, as by the said Justices shall be ordered; and if such Offender shall not be thought (in the discretion of the said Justices) able, or do not make recompence according to such order, then such Offender is to be whipped, or set in the Stocks (in or near the place where the offence was committed) at the discretion of the said Justices. "For the second offence is to undergo the like, "or such other punishment of whipping, or being put in the Stocks as shall "be thought fit." And such two Justices have full power to minister the Oath to such Witnesses, and finally to hear, end, and determine the said Offences.

§. 10. *Wages.* Cloathiers and other Masters that shall refuse to pay such Wages (to their Spinsters, Weavers, or other Workmen whatsoever) as shall be assessed at the Sessions by the Justices of Peace, and shall be thereof convicted before any two Justices of the Peace, (one being of the *Quorum*) upon their own confession, or upon proof by two sufficient Witnesses, shall forfeit for every such offence Ten shillings to the party grieved, the same to be levied by Distress and Sale of the Offenders Goods, by Warrant from the same Justices. 1 Jac. 6.  
P. Just. 56.

*Linnen Cloth.* Two Justices of the Peace (one being of the *Quorum*) may take the Information of Stretching, or other deceitful using of Linnen Cloth, (by him that hath seised it) and of his seizure thereof; and may bind the said Seisor to give in evidence, and to pursue the same Matter with effect (at the next Sessions, &c.) And also to pay the moyety of all that he shall recover, to the use of the Kings Majesty, &c. 1 Eliz. 12.  
Rast. 249.

"The Justices of Peace of the West-Riding of *York*, and others, are to "be a Corporation, and to have a Common Seal, and have power to appoint Searchers of Cloth, and to make By-Laws, 14 Car. 2. c. 32. Such "By-Laws, Rules, and Ordinances, as shall be made by the Warden and "Assistants of Weavers in *Norwich*, touching the well making of *Norwich* "Stuffs, shall be ratified, and confirmed by the Major, and two Justices of "the City, and County of *Norfolk*, and three Justices of the County of "Norfolk (*Quorum unus*.)

§. 11. "The Power of the Justices of Peace of the Town of *Kiderminster*, "in Execution of the Statute made 22 & 23 Car. c. 2. Touching *Kiderminster*-Stuffs. See that Statute.

§. 12. *Importing Wool-Cards.* "No Foreign Wool-Cards, or Foreign Card-wire, or Iron-wire, for making "of Wool-Cards, be Imported into *England*, nor used there; nor any "Card-Wire taken out of old Cards, be put into new Leather, or new "Card-Boards, nor such Wool-Cards made thereof, be put to sale, upon "pain, That every person importing, or making, or putting to sale, shall "forfeit the same, or the value thereof, if the same be not seised. A moyety to the King, the other moyety to him that shall first seise or sue by "Action of Debt, Bill, Complaint, Information, or Indictment, in any of "the Kings Courts at *Westminster*, or in the County, City, Borough, "or Town-Corporate, 14 Car. 2. c. 19. It seemeth by this Statute, that "it may be prosecuted by Information or Indictment in the Sessions. 14 Car. 2.  
c. 19.  
39 Eliz.  
c. 14.

*Common-Prayers.* CHAP. XXV.

“**E**Very Incumbent of a Benefice with cure residing on his Benefice, and §. 1.  
 “having a Curate, shall in person (not having a lawful impediment  
 “to be allowed of by the Ordinary) once in every moneth openly  
 “read the Common-Prayers and Service, and (if there be occasion) Ad-  
 “minister the Sacraments and other Rites in the Parish-Church, or else  
 “forfeit Five pounds to the use of the Parish, upon conviction by con-  
 “fession or proof of two witnesses before two Justices of Peace of the  
 “County, and if not paid within ten days, to be levied by the Church-  
 “Wardens or Overseers, by Warrant of the said two Justices by distress  
 “and sale, rendring the overplus.

14 Ca. 2. §. 2.  
 c. 14. “If any person disabled by 14. Ca. 2. c. 14. To Preach a Sermon or  
 “Lecture, shall during that disability Preach a Sermon or Lecture, he shall  
 “suffer Three moneths imprisonment without bail; And Two Justices of  
 “the Peace, or County, or Mayor, or chief Magistrate of any City, or  
 “Town-Corporate upon Certificate from the Ordinary shall commit him  
 “to the Gaol.

*Coffee.* CHAP. XXVI.

“**N**One shall sell or retail Coffee, Chocolet, Sherbet or Tea without li- §. 1.  
 “cence obtained at the general Sessions of the County, or chief  
 “Magistrate of the place, and the first shewing a Certificate that he hath  
 “given good security for payment of his Duties of Excise to the King by  
 “Recognizance; for which Licence, Security and Recognizance he shall  
 “pay Twelve pence and no more, upon pain to forfeit Five pounds for  
 “every moneth he shall Retail without Licence. 15 Ca. 2. 11. The words  
 “of the Statute are transposed, and therefore *quare* for the meaning.

*Corn.* CHAP. XXVII. V. 15.

5 E. 6. §. 1.  
 13 El. 25.  
 P. Forestall  
 6. “**T**He Certificate of one Justice of Peace (joyned with the Customer  
 of the place) of the unlading and selling of Corn or Cattel, car-  
 ried by water from one place to another of this Realm, unto the Custo-  
 mer and Controller of the place where the same was imbarked, is sufficient  
 upon the Stat. of *Forestalling*. See more of Corn, *tit. Transportation*.

“By the Statute of 1. and 2. P. and M. Stat. 2. c. 5. Corn could not be §. 2.  
 “Transported without licence, unless it were under these prices by the  
 “quarter, Wheat six shillings eight pence, Barley four shillings, Rye three  
 “shillings, and every Justice of Peace might inquire of it by the Statute of  
 “13 El. 13. Certain persons may determine when Corn shall be Transport-  
 “ed, when not, which they may afterwards alter, or the Justices of Peace  
 “in Sessions may alter till the Assizes; and the Queen by Proclamation  
 “may Control all of them. See there the poundage of Corn.

“By 1 Jac. 25. Corn may be Transported, when, of, or under these pri-  
 “ces by the quarter, Wheat Twenty six shillings eight pence, Rye, Pease  
 “and Beans Fifteen shillings, Barley or Mault Fourteen shillings. See there  
 “the poundage.

“By 21 Jac. 28. It may be Transported, when not exceeding these pri-  
 “ces by the quarter, Wheat Thirty two shillings, Rye Twenty shillings,  
 “Beans



"Beans and Pease Sixteen shillings, Barley or Mault Sixteen shillings. See there the poundage.

"By 3 *Car. 4.* It may be Transported, not exceeding these prices by the quarter, *viz.* Wheat Thirty two shillings, Rye Twenty shillings, Pease and Beans Sixteen shillings, Barley or Mault Sixteen shillings. See there the poundage.

"By 12 *Car. 2. c. 4.* Corn may be Transported, not exceeding these prices, by the quarter, *viz.* Wheat Forty shillings, Rye, Beans and Pease Twenty four shillings, Barley and Mault Twenty shillings, Oats Sixteen shillings.

"By 15 *Car. 2. c. 7.* Corn not exceeding these prices may be Transported, *viz.* Wheat Forty eight shillings, Barley or Mault Twenty eight shillings, Buck-wheat Twenty eight shillings, Oats Thirteen shillings four pence, Rye Thirty two shillings, Pease and Beans Thirty two shillings. See there the poundage.

"But by 22 *Car. 2.* Any person Native or Foreigner may Transport any sort of Corn or Grain, although the same exceed the prices mentioned, 15 *Car. 2. c. 7.* See the poundage.

"Any person allowed by Three Justices of Peace may buy Corn or Cattle to carry from one Port to another in this Realm, if the market in Forty days, or as soon as the weather will permit; and there unlaid and sell the same, and bring a Certificate from one Justice of Peace, Mayor or Bailiff, and of the Customer of the Port of the day and place, of the unlading thereof to the Customer of the Port where the same was laden.

Constables. CHAP. XXVIII. V. 16.

§. 1.  
Their  
name.

CONstable, this word is derived or deduced of two old Saxon words, *Cuning*, or *Kinning*, which signifieth *King*, and *Stable*, *Stability*; shewing that these ancient Officers were reputed to be as the stability or stay of the King and Kingdom. *Lamb. 5. Dodd. 73.*

§. 2.  
High Con-  
stables  
how to be  
chosen.

Every Justice of Peace may cause two Constables to be chosen in each Hundred, *Lamb. 190.* and this seemeth to be meant of the High Constables of Hundreds, and to include and imply of congruence the swearing of them; and seemeth to be by virtue and force of the Statute of *Winchester*, made 13 *E. 1.* and of the Commission, the first *Assignavimus* or Clause.

And by the Statute of 34 *H. 8. cap. 26.* two Justices of Peace, the one being of the *Quorum*, may appoint the High Constables in *Wales*.

And yet the usual manner is, that these High Constables of Hundreds be chosen either at the Quarter-Sessions of the Peace; or if out of the Sessions, then by the greater number of the Justices of Peace of that Division where they dwell: and likewise that they be sworn either at the Sessions, or by Warrant from the Sessions; which course hath also been often allowed and commended unto us by the Judges of Assize.

Also in such manner as they are to be chosen, in the same manner, and by the like Authority are they to be removed; for, *eodem modo quo quid constituitur, dissolvitur*: so if there shall be cause to remove and put an High Constable from his place, it hath not been thought fit that any one or two Justices of Peace should do it upon their discretion, but that it should be done by the greater part of the Justices of that Division, and that for some just cause; or else that it be done at and in the General Sessions of the

the Peace: and so was the direction of Sir John Dodderidge at Summer Assizes at Cambridge, Anno Dom. 1620.

13 E. 1. c. 6. By the opinion of Master Lambert and others, these Constables of Hundreds were first ordained to be chosen by the said Statute of Winchester, *tempore* Ed. 1. And they were 'appointed for the keeping of the Peace, and to make view of Armour, twice every year, and to present before Justices assigned, defaults of Armour, of Watches, of High-ways, and of Hue and Cry; and also all such as lodged Strangers for whom they would not answer. See *Rastal*, 379. c. d. *Lamb. Duty of Const.* 5. *Minsh. verbo Constable.* §. 3. when first made.

See Stat. 4. E. 3. cap. 3. & 10. Petty Constable (in Towns and Parishes) were after devised (for the aid of the Constables of the Hundred,) viz. about the beginning of the reign of King Ed. 3. as it appeareth by M. Lambert in his Book of *The Duty of Constables*, pag. 9. §. 4. Petty Constables.

But it appeareth by *Fineux* 12 H. 7. fol. 18. a. that whereas the Sheriffs of the Counties, at the first, had the Government of their Counties committed to them, afterwards, by reason of the multitude of people, and for that it was too great a thing for one person (sc. the Sheriff) to undertake, therefore Hundreds were devided and derived out of the Counties, and in every Hundred there was ordained a Conservator of the Peace, who was called the [High] Constable; and after, Boroughs or Towns were made, and within every of them also was ordained a Conservator of the Peace, who is called the petty Constable, (and in some places the Borough-head:) and this was long before the times that Mr. Lambert speaketh of, sc. long before King Ed. 1. or King Ed. 3. which also may appear by the derivation of the word Constable *hic supra*, and that they were in 'the time of the Saxons': so that it may seem, that as well the High Constable as the petty Constables, and their Authorities, were by the common Law; and that the old Statutes concerning them are but a recital of the ancient Common Laws.

'The Authority which High Constables and petty Constables have by the Common Law for keeping the Peace, see chap. 1. And the Constables power to make a Deputy. *Ibid.*

"Constables may make their Deputies, and such Deputies are within the Statute of 7 Jac. as was resolved in *Felp's* case, *M. 13 Jac. B. R.*

Co. 5. 59. If a Justice of Peace make a general Warrant to bring a man before me, or any other, &c. It is not at the choice of the delinquent, but of the Constable, before what Justice to carry him; but a Justice of Peace may make a Warrant to bring an Offender before himself, and it is good. *Fosters case.*

"I have seen an MS. said to be a Collection of Sir Nicholas Hides of the Office of a Justice of Peace; wherein is said, That it was resolved by all the Judges of England, *Trin. 5 Ca. 1.* That Justices of Peace at Sessions may not compell the Constables of Hundreds to attend at the Quarter-Sessions, and to present Offenders upon Oath, otherwise it is at the Assizes, &c.

The chusing and swearing of these petty Constables is reputed properly to belong to the Court-Leet: yet we find it usual and warranted by common experience, that every Justice of Peace doth also swear them, and upon just cause doth and may also remove them. See the title *Warrants*, cap. 121. §. 5. How choosen.

Ba. 11. 5, 6. But in ancient time both the High Constable of Hundreds, as also the petty Constables of every Town, were yearly appointed by the Sheriff in his Tourn, and were there sworn, or received their Oath: and it seemeth they

they may still be chosen or appointed, and sworn in the Sheriffs Tourn, as well as in the Leet.

Constables lawfully chosen, if they shall refuse to be sworn, the Justice of Peace may bind them over to the Assizes or Sessions of the Peace. And for such his contempt, he is there to be indicted, and thereupon fined and imprisoned. *Dir.* 29.

“But he cannot commit them, untill they will take on them the Office :  
“for such a commitment was adjudged void, *M.* 1652. And it was there  
“resolved, that they could not choose Constables, but might swear them,  
“or if unfit persons were chosen, might remove them.

§. 6.  
Constables  
their Abi-  
lity.

And here, for the better chusing of these Constables, you shall under- Co. 8. 41  
stand, that the Law requireth that every Constable be *Idoneus homo*, that  
is, apt and fit for the execution of the said Office ; and he is said in Law to  
be *Idoneus*, who hath these Three things, Honesty, Knowledge, and Ability.

Honesty, to execute his Office truly, without malice, affection, or partiality.

Knowledge, to understand what he ought to do.

Ability, as well in substance or estate, as in body, that so he may intend and execute his Office diligently, and not through impotency of Body, or want, to neglect the place.

“For Constables chosen out of the meaner sort, they are either ignorant  
“what to do, or dare not do that they should, or are not able to spare the  
“time to execute this Office : they are therefore to be able men, and to be  
“chosen of the abler sort of Parishioners ; and are not to be chosen either  
“by the house, or other Custome.

And if any shall be chosen Constable who is not thus inabled and quali- Co. 8. 42  
fied, he may by Law be discharged of his said Office, and another fit man  
appointed in his place. “For the duty of a Constable see *Postea* title  
“Warrant’.

§. 7.

“Leets chusing unable, or unfit petty Constables, is cause of forfeiture of  
“the Leet, and such choice is void. And Two Justices of Peace may re-  
“move such a Constable ; or rather the Lord of the Leet would be dealt  
“withall to chuse fitter Constables ; and upon his default, complaint is to  
“be made at the Assizes or Sessions of the Peace, from thence a Warrant  
“to be granted to the Justices of Peace to chuse and swear others more fit.  
“And so was the Direction of the Judge of Assize at *Cambridg*, Anno 8.  
“*Caroli Regis.*

“1. December, 4 Car. William Stockdale elected Constable was dis-  
“charged, for that his dwelling was not convenient for the well execution  
“of the said Office. *Ex libr. Sess. Middlef.*

“1. If a Constable die, or remove out of the Parish, his place is to be  
“supplied at the Leet, if that time fall near ; otherwise by the Sessions :  
“but if that be too far off, then by the next Justices. *Dir.* 30.

“2. If a poor weak man be chosen a Constable, the Justices of the Peace  
“must help this. *Dir.* 31.

“3. A man for his quality otherwise fit to be a Constable, &c. procuring  
“himself to be the Kings servant extraordinary, may notwithstanding be  
“chosen a Constable, and may well perform his ordinary service in the  
“Country. *Dir.* 38.

“4. Petty Constables conveying Rogues from Parish to Parish, for their  
“Charges, see *hic*, cap. 47.

“For the Duty of a Constable, see their Oath, *hic* cap. 121.

“Two Justices of the Peace may appoint and swear new Constables, 14 Car. 21  
“Head-boroughs, &c. in case of death or removal of such Officers out of cap. 12.  
“the



"the Parish. They to continue till the Lord hold a Leet, or untill the next Sessions, who shall approve of them, or appoint others as they shall think fit". And if, in default of holding Court-Leets, they continue above the year, they may be discharged at the Sessions, and others put in.

"And by the same Statute, Constables, Headboroughs, and Tithing-men out of purse, with the Church-wardens and Overseers of the Poor, and other Inhabitants of the Parish, may make Rates upon all Occupiers of Lands, and Inhabitants, and all others chargeable by the Statute 42 E. to the Poor; which being confirmed under the Hands and Seals of two Justices of the Peace, may be levied by their Warrants, by Distress and Sale of the Refusers Goods. "For the reimbursing themselves their charges in relieving, carrying with passes, and in carrying Rogues, Vagabonds, and sturdy Beggars to the House of Correction".

## Conspiracies. CHAP. XXIX.

2 E. 6.  
c. 15.

**I**F any Butchers, Brewers, Bakers, Poulterers, Cooks, Costermongers, or Fruiterers shall Conspire, Covenant, make, Promise, or Oath, not to sell their Victuals but at certain prices; or if Artificers, Workmen, or Labourers, Conspire, Covenant, or Promise, or make Oaths that they will not do their work but at certain Prices, or Rates, or shall not work but at certain hours and times, or shall not take on them to finish what another hath begun, or shall do but a certain work in a day; such person convicted by witness, confession, or otherwise, shall forfeit Ten pounds to the King, and if he have not sufficient to pay, or do not pay it within Six days after conviction shall have Twenty days imprisonment, and shall only have Bread and Water. And for the Second Offence shall forfeit Twenty pounds, and shall pay it within Six days, or else have the Pillory. And for the Third Offence forfeit Forty pounds, and if he pay it not within Six days shall be set in the Pillory, and have one of his ears cut off and be infamous.

§. 1.

2 E. 6.

c. 21.

22 & 23

Ca. 2.

The Statute

is revived.

"And if such Conspiracy be made in a Society, Company of any Craft, Mystery or Occupation of the Victuallers above mentioned by the more part of them. Then over and besides the particular punishment above mentioned, the Corporation be dissolved, Justices of Peace, Mayors, &c. at their Sessions and Courts shall hear and determine the Offences, and punish the Offenders.

§. 2.

## Conventicles.

## CHAP. XXX.

16 Car. 2.  
c. 4.

**T**He Stat. 35 Eliz. cap. 1. Is declared to be in force, and farther remedies against the dangerous practices of Seditious Sectaries and other Meetings in Conventicles, under colour of Exercise of Religion. See the Act at large, being upon continuance for three years after the end of the said Parliament, and to the end of the next Session of Parliament after the said three years, and no longer. This act is expired.

§. 1.

The Stat. 17 Car. 2. cap. 2. apud Oxon. It is Enacted, That all Parsons, Vicars, Curates, Lecturers, and other persons in Holy Orders, or pretended Holy Orders, or pretending to Holy Orders, and all Stipendiaries, and other persons who have been possessed of any Ecclesiastical or Spiritual Promotion, and who have not declared their assent, and subscribed the

§. 2.

Decla-

'Declaration mentioned in the Act of 14 *Car.* 2. for Uniformity of public Prayers, &c. and shall not take and subscribe the Oath following;

*Preachers*

'I A. B. do swear, That it is not lawful upon any pretence whatsoever, to take Arms against the King: And that I do abhor that Traiterous Position of taking Arms by his Authority against his Person, or against those that are Commissionated by him, in pursuance of such Commissions: And that I will not at any time endeavour any Alteration of Government either in Church or State.

'And all such persons who shall take upon them to Preach in any unlawful Assembly, Conventicle or Meeting, under colour or pretence of any Exercise of Religion, contrary to the Laws and Statutes of this Kingdom; shall not at any time after the 24 of *March*, 1665. unless in passing upon the Road, come or be within five miles of any City or Town Corporate, or Borough that sends Burgesses to the Parliament, within *England*, *Wales*, or Town of *Barwick upon Tweed*, or within Five miles of any Parish, Town or Place wherein he or they have, since the Act of Oblivion, been Parson, Vicar, Curate, Stipendary or Lecturer, or taken upon them to Preach in any unlawful Assembly, Conventicle or Meeting, under colour or pretence of any Exercise of Religion, contrary to the Laws and Statutes of this Kingdom, before he or they have taken and subscribed the said Oath before the Justices of the Peace at their Quarter Sessions, to be holden at the Division next to the Corporation, City or Borough, Parish, Place, or Town, in open Court (which the said Justices are empowered to administer) upon forfeiture for every such Offence of the sum of Forty pound, one third part thereof to his Majesty and his Successors, the other third part to the Poor of the Parish where the offence is committed, the other third part to the person that will sue for the same by Action of Debt, Plaint, Bill, or Information, in any Court of Record at *Westminster*, or before any Justices of Assize, Oyer and Terminer, or Gaol-delivery, Justices of the Counties Palatine of *Chester*, *Lancaster*, or *Durham*, great Sessions in *Wales*, or Justices of the Peace in their Quarter Sessions; no Effoin, Protection, or Wager of Law herein to be allowed.

'It shall not be lawful for any person or persons restrained from coming to any City or Town Corporate, Borough, Parish, Town or Place, as aforesaid, or for any other person or persons who shall not first take and subscribe the said Oath, and shall not frequent Divine Service established by the Law of this Kingdom, and carry him or her self reverently there, to teach any publick or private School, or take any Boarders or Tablers to be taught or instructed by him or her self, or any other, upon pain of forfeiture of Forty pound for every Offence, to be recoverd and distributed as aforesaid.

'And any two Justices of the Peace in their respective County, upon Oath to them of any Offence against this Act, (which Oath they are empowered to administer) may commit the Offender for Six moneths without Bail; unless before such Commitment he shall before the said Justices of the Peace swear and subscribe the said Oath and Declaration.

'Provided, That appearance to any Subpoena, Warrant, or Process, whereby personal Appearance is required, shall not be construed an Offence within this Act.

§. 3. There was an Act made 16 *Car.* 2. c. 6. Touching the suppressing Seditious Conventicles, but the same being Temporary is expired, as by the same Act appeareth.

"If

"If any Subject of Sixteen years of age shall be present at any meeting under pretence of Exercise of Religion in any place, at which are present Five persons, besides those of the House, if it be in a House inhabited, or if in a House, Field, or place where no Family is then, if above Five persons be present, any one or more Justice of that Liberty, or the chief Magistrate upon proof of the Offence by Confession, or two Witnesses, or notorious evidence and circumstance of the Fact, to make a Record, which shall be a conviction, and to impose Five shillings a fine on every Offender, which shall be certified at the Quarter Sessions; and for the second Offence Ten shillings, which fines shall be levied by Distress and Sale, and if poor on any person present at such Conventicle, and convicted at discretion, so as such sum to be levied on any other, exceed not Ten pound at one meeting. 22 Car. 2.

"The Constable, Headborough, Tithingman, Church-warden, or Overseer to levy it by Warrant, under the Hand and Seal of such Justice, or chief Magistrate, and to deliver it to the Justice, or chief Magistrate, one part to the King, so paid to the Sheriff, *viz.* To be delivered into Sessions, and they to deliver it to the Sheriff, and to make a Record of it, and to certify it into the Exchequer, another third part to the poor, and the other third part to such Informer, or other person as the Justice shall appoint, having respect to their industry thereabouts. 22 Car. 2.

"Every Preacher in such Conventicle shall forfeit Twenty pound to be levied by Distress and Sale, and if he be a stranger, or unknown, or is fled, or cannot be found, or the Justices shall judge him unable to pay, the Justice may levy the same on the Goods of any persons then present to be disposed of as aforesaid. And for the second Offence the Preacher to forfeit Forty pound, to be levied and disposed of as aforesaid, 22 Car. 2.

"The person that suffers such Conventicle in his House, &c. Shall forfeit Twenty pound, to be levied and disposed of as aforesaid. No person shall be liable to above Ten pound at any one meeting in respect of the poverty of any person. 22 Car. 2.

"Where any sum charged on such Offender exceeds Ten shillings, he may within a week after it is levied, appeal in writing to the Sessions, and leave it with the Justice, whither the party convicting shall return the Money, and the whole Record and Evidence under Hand and Seal, to which the Appellant may plead, and it shall be tryed by a Jury, and if he do not prosecute, or shall not be acquitted, or Judgment shall not pass for him; the Justices shall give treble costs, and no other Court shall meddle with Appeals, and the Appellant is to enter into a Recognizance before the person convicting to prosecute his Appeal, which shall also be certified to the Sessions. 22 Car. 2.

"The Justices, or Constables, Tithingmen, and Headboroughs by Warrant from them, with what aid they think fit, upon refusal enter the House or Place, and seize the persons, and upon a Certificate under a Justices Hand and Seal of his information or knowledg of a Conventicle, and that he cannot suppress it, any Commissioned Officer of the Militia, or other the Kings Forces, and other Ministers of Justice, with Souldiers or other aid may prevent or dissipate them. But no Lords House shall be searched, but by Warrant under the Kings Sign manual, or in presence of the Lord Lieutenant, or Deputy Lieutenant, or two Justices, *Quorum unus.* 22 Car. 2.

"Any Constable, &c. knowing of a Conventicle, and not giving information, but they or any other being called, refusing to go in aid of them, and thereof convicted in form aforesaid, shall forfeit Five pound to be levied



"levied by Distress and Sale, and a Justice of Peace, or chief Magistrate neglecting his duty, forfeits One hundred pounds, one moiety to the King, the other to the Informer by action, &c. 22 Car. 2.

"The Act shall be taken most strictly for suppressing of Conventicles, and no proceeding shall be revert for form. 22 Car. 2.

"If any person convicted, live in another County or Corporation, upon certificate under hand and seal of the person convicting to the Justices or chief Magistrate, he or they shall levy the penalty. 22 Car. 2.

"The party convicted being a feme covert, living with her Husband, the penalties shall be levied on him: every Offender must be presented within Three moneths. 22 Car. 2.

#### Cottages, and Inmates. CHAP. XXXI.

Erecting Cottages.

"NO person shall make, build, or erect, or cause, &c. any Cottage for Habitation, or Dwelling, nor convert any building to be used as a Cottage, unless he assign and lay to it 4 Acres of Land, being his freehold and inheritance, lying near it, to be continually used with it, upon pain to forfeit to the King 10 l. Every person that shall uphold or continue any such Cottage to be erected or converted, shall forfeit 40 s. for every moneth. There shall be no Inmate, or more Families, or Households, then one dwelling in any Cottage, made or to be made, upon pain that the Owner, or Occupier wilfully suffering it, shall forfeit to the Lord of the Leet 10 s. per menssem.

Continuing

Inmates.

"The Statute shall not extend to Cottages in any City, Town-Corporate, or ancient Burrough, or Market-Town, nor to Cottages erected for habitation of Workmen in Minerals, Cole-mines, or Quarries of Stone, or about making of Brick, Lime, or Cole, so as the same be not above a mile from the work, nor to a Cottage within a mile of the Sea, inhabited by a Sailor, nor to a Cottage for a Keeper or Warrener, nor to a Cottage heretofore erected and used for the habitation of a Shepherd, or poor person, to allowed to continue by the Sessions.

"The Justices of Peace in their Sessions (*inter alios*) may hear and determine Offences against that Act by Indictment, as by presentment or information, and to award Execution by *Fieri facias*, *Elegit*, *Capias*, or otherwise as the case shall require.

"The Church-wardens and Overseers by leave of the Lord in writing under the Hand and Seal of the Lord, or by order of the Sessions with the Lords leave may erect Cottages for poor people.

#### Counterfeiters. CHAP. XXXII.

Two Justices.

"TWO Justices of Peace, the one being of the *Quorum*, may convent by Process, or by their Warrant, (*sc.* 'may grant their Warrant to attach and bind over') to the next General Sessions of the Peace or Assizes, any person that is suspected of any deceitful getting into his hands any money, goods, or other thing of any other persons, by means or colour of any false Tokens or counterfeit Letter made in another mans name, there to be examined and ordered. *Henry Jones* for a counterfeit Pass was adjudged to the Pillory, and fined: *Lib. Delib. Gaol. Newgate, 5 Dec. 8. Car.* The like for counterfeiting a Butchers Licence, 30 March, 7 Car. eod. lib. Also it seemeth or else the said Justices may call or convene before themselves the Offenders, and after due Examination, &c. 'may imprison such Offenders, or bail them untill the next General Sessions or Gaol-delivery.' And in this case the said Justices of Peace shall do well to take Examination of the

the Offence, and to certifie the same to the said Sessions or Gaol-delivery ; and withall to bind over the Informers and Witnesses to give Evidence therein.

Also it seemeth that any one Justice of the Peace may bind such Offenders ( as Cheaters ) to their Good Behaviour, and so to the next Assizes or Sessions of the Peace, there to be examined and ordered : or else (by force of the Statute 7 Jac. cap. 4.) may send such Offenders ( as idle and disorderly persons ) to the House of Correction, there to be continued untill the next Assizes or Sessions, and then and there to be forth-coming, &c. Yet *quære* of sending them to the House of Correction : and it seemeth more warrantable, if they be sent to the House of Correction by order of the Sessions. *Richardus Freed* had Judgment to be set in the Pillory with a Paper written, *A common Cheater and Consener*, and thence to be had to *Bridewell*, and kept at work till he paid Twenty Nobles for a Fine, and put in Sureties for his Good Behaviour. *Lib. Delib. Gaol. Newgate; 10 July, 7 Jac. fol. 77.*

“ He that shall personate any Seaman, Souldier, Artificer, or Labourer in the presence of His Majesties Commissioners, or Officers, Pay-master, or Cashier, in order to the receiving any Money due from the King; the principal Officer, and Commissioners may Arrest such person, and Imprison him untill he shall find Bail to appear at the next Assizes or Sessions, and being there convicted, shall forfeit double the value he would have gained, to the Governors of the Chest at *Chatham* for the use of the use of the poor and maimed Souldiers, and be Imprisoned for a time, not exceeding one year at the discretion of the Court. 22 & 23 Car. 2.

“ He that shall Counterfeit the hands of the Treasurer, Comptroller, Surveyor, Clerk of the Acts, or Commissioners of the Navy, or of the Signing or Vouching Officers of His Majesties Navy, Ships or Yards to any Bill, Ticket, or Papers, or shall knowingly produce such Counterfeit Ticket, Bill, or Paper; the Commissioners and Officers of the Navy may commit him to Prison, untill he shall find Bail to appear at the next Assize or Sessions, there to be proceeded with according to Law. 22 & 23 Car. 2. *Challenges. See Duels.*

### Customs. CHAP. XXXIII.

- 14 Cat. 2. “ **W**Here any Officers of the Customs be by any person armed with a §. 1:  
C. 11. “ Club, or other Weapon forcibly hindred, affronted, abused,  
“ beaten, or wounded in the Execution of their Trusts and Services, either  
“ on Board a Vessel, or by Land or Water, the person resisting, &c. Such  
“ Officers, or their Deputies shall by the next Justice of Peace, or other  
“ Magistrate be committed to Prison, untill the next Quarter-Sessions.
- 14 Car. 2. “ If any Carman, Porter, Waterman, or other person shall assist in the §. 2:  
C. 14. “ taking up, landing, Shipping, or carrying away any Goods, Wares, or  
“ Merchandizes, either from the shore outwards bound or out of any  
“ Ship or Vessel arriving from parts beyond the Sea, without a Warrant  
“ and presence of one or more Officers of the Customs, the person so  
“ offending, being apprehended by a Warrant from a Justice of Peace,  
“ and the same proved by the Oaths of two Witnesses, for the first offence  
“ the Justice may commit him to Gaol, untill he shall find Sureties for the  
“ good Behaviour, for so long time, untill he shall be thereof discharged  
“ by the Lord Treasurer, Chancellor, under-Treasurer, or Barons of the  
“ Exchequer. And for the second offence, being so convicted, the Justice  
“ may commit him to Gaol for two moneths without bail, or untill he shall

- “ pay the Sheriff Five pound, or untill he shall be discharged by the Lord Treasurer, Chancellor, under-Treasurer, or Barons.
- §. 3. *To enter a House for Goods concealed.* “ If any person shall cause any Goods, for which Custom, Subsidy, or other Duties are due by vertue of one Act of 12 Car. 2. c. 14. To be landed or conveyed away, without entry first made, and the Customer, Collector, or his Deputy first agreed with upon Oath made before (amongst others) The chief Magistrate of the Port, or Place where the Offence shall be committed, or the place next adjoining, he may issue out a Warrant to any person or persons, enabling them, with the assistance of a Sheriff, Justice of Peace, or Constable to enter any House in the day time, where the Goods are suspected to be concealed, and in case of resistance to break the House and seize the Goods; but no House shall be entred, but within a moneth after the Offence committed, and if upon such Information a House be searched, and prove false, the party shall recover his full damage and costs against such Information, to continue untill the end of the first Session of next Parliament.

## Custos Rotulorum, and Clerks of the Peace. CHAP. XXXIV.

- §. 1. “ NO person shall be appointed or assigned *Custos Rotulorum*, but such as have a Bill signed with the Kings hand for the same, which Bill signed shall be a sufficient Warrant for the Lord Chancellor, or Lord Keeper to grant a Commission to that purpose, untill the King in like manner shall assign another. 37 H. 8. c. 19.
- §. 2. “ Every *Custos Rotulorum* shall nominate and appoint every person, who shall be Clerk of the Peace, and to grant such Offices to such able persons instructed in the Laws, as shall be able to use the same, for the time the *Custos Rotulorum* shall continue in his Office. 37 H. 8. c. 19.

## Dying. CHAP. XXXV. v. 18.

*One Just.* UPON Information given to any Justice of Peace against any person suspected to offend this Statute concerning the using of Logwood, *alias* Blockwood, in Dying, such Justice may by his Warrant, or other Commandment, cause to come before him, and may examine by Oath, or otherwise, the Servants or Workmen of such suspected Offenders, and other persons able to disclose the Offence: And upon finding the same, (sc. that any person hath used, or caused to be used, in the Dying or Colouring of any Cloth, Wooll, Yarn, Grogram, Buffins, or Silk, or any thing made of Woollen, Yarn, or Silk, any Logwood) the said Justice shall bind with Sureties (to the next Gaol-delivery, or Quarter-Sessions of that County) as well such suspected Offenders, there to make answer for the said Offence, as the Examinatees which do discover the Offence; and shall also certify thither the said Examinations: And if such suspected Offender shall refuse to be bound, then may such Justice send such suspect to the next Goal, there to remain till he or she shall become so bound with Sureties. And the Justices of Peace, &c. may indict and convict the Offenders, and set them in the Pillory, for such time as they shall think fit, and the party shall forfeit 20 l. &c. 29 El. 11.

*Two Justices.* Any two Justices of the Peace of the County where any Logwood shall be found (in whose hands soever it shall be) may cause the same to be burned.

*Duels.* See in the Appendix  
*Drunkenness,* vide tit. *Ale-houses.*

*Egyptian.*



## Egyptian. CHAP. XXXVI. V. 19.

22 H. 8. 10.  
Rast. 135.

§. 1.  
One Justice  
Every Justice of Peace, Sheriff, and Escheator, within one moneth after their arrival, may seize all Goods of any Outlandish persons, calling themselves *Egyptians*, that shall come into this Realm, and may also keep the one moiety thereof to his own use, making account to the King in the Exchequer for the other moiety. And every person that can prove by two credible Witnesses (before the said Justice or other Officer that so seizeth the said Goods) that any of those Goods were craftily or feloniously taken from him, shall incontinently be restored thereto (by the party that so seizeth them) upon pain of the double value thereof to be forfeited by such Seizer to such Prover.

5 Eliz. 10.

§. 2.  
But note, That after the moneth the Offence is made Felony by the Statute of 1 & 2 Ph. & Mar. cap. 4. & 5 Eliz. cap. 20. P. 2. And then it seemeth the King is to have the Goods wholly. And *Quare* whether the Statute of 22 H. 8. be still in force, or be altered by the said Statute of 1 & 2 Ph. & Ma. c. 4. & 5 Eliz. cap. 20.

Also note, That by the Statute of 1 & 2 Ph. & Ma. & 5 Eliz. the word *Egyptians*, is now extended to such counterfeit Rogues and Vagabonds, as being English or Welsh people, do call themselves *Egyptians*, or do accompany themselves together, disguising themselves by their Apparel, Speech, Countenance, or other Behaviour, like unto *Egyptians*, or like unto such Vagabonds as call themselves, or are commonly called *Egyptians*: And so they are all Felons, or at least they are all incorrigible Rogues; and therefore the Justice must send all such to the Gaol.

## Estreats. CHAP. XXXVII.

§. 1.  
Every Clerk of the Peace shall deliver to the Sheriff within Twenty days after the 29th day of September in every year, a perfect Estreat of all Fines, Issues, Amerciaments, Recognizances, monies and forfeitures imposed, set, lost or forfeited in any Sessions of the Peace, before Michaelmas by any person due to His Majesty, 22 & 23 Car. 2.

And the said Clerk shall on or before every second Munday after the morrow of All-Son's, deliver into the Exchequer a perfect Schedule of all such Estreats and Schedules by him delivered to the Sheriffs, on pain to forfeit 5 l. one moiety to the King, the other to the Informer, 22 & 23 Car. 2.

§. 2.  
No Justice of Peace, or Clerk of the Peace, shall spare, discharge, or conceal any Indictment, Fine, Issue, Amerciament, forfeited Recognizance, or forfeiture, set, lost, or forfeited, or money paid in satisfaction of Fine or Forfeiture under, by order of Court, nor miscertifie or estreat the same, whereby the Process of Exchequer may be made invalid, upon pain to forfeit the treble value thereof, one moiety to the King, the other to the Informer, 22 & 23 Car. 2.

Where any Fine or Forfeiture shall be paid to any Clerk of the Peace, and be estreated into the Exchequer, the Summons or Process of Green-wax shall go to the Sheriffs against him, 22 & 23 Car. 2.

§. 3.  
*Quare*, where a Sheriff demands money on the Green-wax, he ought to shew the same to the party, and that which is paid shall be totted, or else he shall pay treble damage to the party, and be fined to the King, and the party may bring his Suit before Justices of Peace, Sta. 42 E. 3. 9. Sta. 7 H. 4. 3 W. 2. c. 19.

## Excise. CHAP. XXXVIII.

§. 1.  
Excise for  
life.

"BY Act of 12 Car. 2. c. 23. Is settled upon the King for life, these <sup>12 Car. 2. c. 23</sup>

"Duties.

"For every Barrel of Beer or Ale, above 6 s. the Barrel, brewed by a common Brewer, or any other that doth sell Beer publickly or private-ly, 15 d.

"For every Barrel of 6 s. or under, 3 d.

"For every Hoghead of Cider or Perry by the Retailer, 15 d.

"For every Gallon of Metheglin by the maker, to be sold, ob.

"For every Barrel of Vinegar-Beer, Brewed by a common Brewer 6 d.

"For every Gallon of Strong Water, or Aqua-vitæ, by the maker, 1 d.

"For every Barrel of Beer or Ale imported from beyond the Sea, 3 s.

"For every Tun of Cider or Perry imported, 5 s.

"For every Gallon of Spirits, made of Cider or Wine imported, 2 d.

"For every Gallon of Strong-water imported, perfectly made, 4 d.

"For every Gallon of Coffee by the maker, 4 d.

"For every Gallon of Chocoler, Sherbet, and Tea, 8 d.

By 22 Ca.  
2. Brandy  
is declared  
to be  
strong-wa-  
ter within  
this Act.

§. 2.  
Excise to  
the King  
and his  
Heirs.

"The like Excise is given to the King and his Heirs by the Statutes of 12 <sup>12 Car. 2. c. 24.</sup>

"Car. 2. c. 24. In lieu of the Court of Wards and Liveries; And the

"provisions of both Acts being the same in substance, and for the most part

"in words are abridged as followeth:

§. 3.  
Who shall  
pay it.

"1. The Excise of Foreign Liqueurs shall be paid by the Merchant-

"importer in ready money, and before landing, and by 15 Car. 2. c. 11.

"there is a penalty of the forfeiture of the goods.

§. 4.  
Entries.

"2. All common Brewers once a week, and all Retailers once a moneth

"make Entries of what they shall Brew or make in that week or moneth,

"or else the Brewer to forfeit 5 l. Inn-keeper 5 l. other Retailer 20 s.

§. 5.  
Payment.

"3. A common Brewer shall within a week, and other Retailer within

"a moneth after they make, or ought to make their Entry, shall pay the

"duty, or pay double the duty to be levied of their goods.

§. 6.  
Officer.

"4. No person living in a Market-Town, shall go out of that Town, or

"if he live out of a Town shall go farther than the next Market-Town on

"the Market-day.

§. 7.  
Gagers.

"5. The Commissioners, and Sub-Commissioners in their divisions may

"appoint Gagers under Hand and Seal, which Gagers may by night or

"day, if by night in the presence of a Constable, or other lawful Offi-

"cer upon request be permitted to enter any House or place of Brewers

"and Retailers, and to take accompt of such Liqueurs, and make return to

"the Commissioners, or Sub-Commissioners, leaving a Copy of such re-

"turn with the Brewer, Maker, or Retailer under his hand, which return

"shall be a charge upon the Brewer, Maker, or Retailer, and if such

"Brewer, Maker, or Retailer shall refuse such Gager Entry, or to Gage or

"take accompt, the Gager may forbid him to sell or carry out the same,

"and if he shall sell or carry out the same not having paid the duty, shall

"over and above the double value pay Five pounds.

§. 8.  
Vessels.

"6. Every 36 Gallons of Beer, and 32 Gallons of Ale to be taken by

"the Ale quart, shall make a Gallon of Beer or Ale and other Liqueurs by

"the Wine quarr.

§. 9.  
Prices.

"7. No Brewer or Retailer shall upon sale, take more than the usual

"prices, saving that common Brewers may take the Excise.

"8. Every

"8. Every Common Brewer shall out of Twenty three Barrels of Beer, §. 10. Allowance  
 "be allowed one; and so out of Twenty two Barrels of Ale.

"9. Every Common Brewer wittingly making a false Entry, and Con- Falsely Entry  
 "victed as by the Act is directed, shall forfeit as aforesaid; and so for six  
 "Moneths next following.

"10. No Beer or Ale is to be delivered by the Common Brewer to the  
 "Retailer, until the duty be paid. If any Brew only to sell in a Fair, and  
 "shall pay the duty before sale, shall be discharged.

"11. The Commissioners and Sub-Commissioners may compound with §. 11. Composition  
 "the Brewer or Retailer, as may be for most advantage of the Receipts  
 "thereof.

"12. The Lord Treasurer or Commissioners of the Treasury, or such as §. 12. Farming  
 "the King shall appoint, may Let to Farm the duty for three years.

"13. All Forfeitures and Offences, within the limits of the chief Office §. 13. Appeal  
 "in London, by the Commissioners or Governors of Excise, or the Com-  
 "missioners of Appeal, in case of Appeal: And in other places, by two  
 "or more Justices of Peace, near the place, and in case of neglect or re-  
 "fusal of such Justices, within Fourteen days after complaint and notice  
 "to the Offender, then by the Sub-Commissioners; and if any person  
 "find himself grieved with the Judgment of such Sub-Commissioners, he  
 "may Appeal to the Quarter Sessions, whose Judgment shall be final.  
 "Which Commissioners and Justices are required, upon complaint, to  
 "Summon the Party, and upon his appearance or contempt, to examine  
 "the Matter; and upon Conviction by Confession or Proof, by one or  
 "more Witnesses, to give Judgment, and to grant Warrants to levy by  
 "sale of Goods, if not redeemed within Fourteen days, and for want of  
 "Distress, to imprison until satisfaction.

"14. The Justices and Commissioners may mitigate such Forfeitures, §. 14. Forfeiture  
 "but not below the double duty, besides costs and charges of such  
 "Officers, which the Justices shall allow them. Which Forfeitures (Charges  
 "deducted) the King shall have Three fourth parts, and the Informer  
 "one.

"15. There shall be a Head Office in London, or Ten miles off it; to §. 15. Head Office  
 "which, all other Offices shall be subordinate and accountable, as long as  
 "the King please, to be managed by such Persons as His Majesty shall ap-  
 "point; and London, and Westminster, and places within the Limits of  
 "the Weekly Bills of Mortality, shall be within the care of that Office;  
 "(and that the King shall appoint Commissioners and Sub-Commissioners  
 "in all other places) which Office, in all places where it is appointed,  
 "shall be kept open, from Eight till twelve, and from Two till five; and  
 "the chief Commissioners shall pay all Moneys collected into His Majesties  
 "Receipt of the Exchequer.

"16. No person shall be capable of such Office or Employment, re- §. 16. Oath  
 "lating to the Excise, until he shall, before two Justices of the Peace,  
 "take the Oaths of Allegiance and Supremacy, and this Oath.

"You shall swear to execute the Office of truly and faithfully with-  
 "out favor or affection, and shall from time to time, true Account make, and  
 "deliver to such person and persons as His Majesty shall appoint to receive the  
 "same, and shall take no Fee or Reward for the execution of the said Office,  
 "from any other person, then from His Majesty, or those whom His Majesty  
 "shall appoint in that behalf.

"Which Oath every Justice of Peace shall certify at the next Sessions,  
 "there to be Recorded.

"17. No



§. 17. " 17. No Writ of *Cerciorari* shall supersede Execution, or other proceed-  
*Cerciorari.* " ings, upon any Order made by the Justices in pursuance of this Act.

" Thus far go these two Acts of Parliament and 15 Car. 2. c. 11.

" An Explanatory Act was made as followeth.

§. 18. " First, No Common Brewer or Retailer of Beer and Ale without 15 Car. 2.  
*Measures* " notice to the next Excise-Office, or to the Commissioners, Farmers, or Sub-  
*altered.* " Commissioners of that Division, erect, alter, or enlarge any Tun, Fat, c. 11.

" Back, Cooler, or Copper, or use them for Brewing; or shall use or  
 " make any private Store-house, Cellar, or place, other then such as were  
 " then opened and used in his common and usual Brew-house, upon pain to  
 " forfeit Fifty pounds. And every person in whose occupation the same  
 " shall be found, shall forfeit Fifty pounds. And such Tun, Fat, Cooler,  
 " Back, or Copper, with the Beer or Wort therein, may be seized and de-  
 " livered to the Overseer of the Poor, to be sold for the use of the Poor,  
 " and distributed amongst them.

§. 19. " Secondly, No Commissioner for regulating the Excise, shall di-  
*Commis-* " rectly or indirectly Farm it by Patent to himself, or any other in trust;  
*sioners* " nor Farmer be capable of being a Commissioner: And if he act, shall  
*nor* " loose the benefit of his Farm, and be disabled to be Farmer or Com-  
*Farmers.* " missioner; and all Acts made void; and persons troubled, may bring  
 " their Actions.

§. 20. " Thirdly, Every Gager shall weekly after a Common Brewer hath  
*Gager.* " or ought to make his Entry, deliver to him, at his house, or some of his  
 " servants, a Copy of his Return, or forfeit Forty shillings. And a Brewer,  
 " if he certify his Entry, or discharge the same within a week after such  
 " note delivered, shall not incur any Forfeiture.

" Fourthly, Two able Gagers in every City shall be appointed,  
 " one by the Commissioners, the other by the Brewers, and shall take an  
 " Oath before one Justice, to Gage all Tuns, Fats, Coppers, and Vessels;  
 " and deliver one Copy to the Commissioners, and another to each  
 " Brewer.

§. 21. " Fifthly, No Commissioner, Sub-Commissioner, Farmer of Excise,  
*Officer no* " Common Brewer, or Inn-keeper, shall act as a Justice of Peace; if he  
*Justice.* " do, all Acts done by him are void.

§. 22. " Sixthly, The Commissioners, Farmers, or Sub-Commissioners,  
*Deputies in* " shall under their Hand and Seal, depute some person in each Market  
*Towns.* " Town, to be there every Market day in some publick place, to receive  
 " Entries; and the next Market day it shall be published, who shall at-  
 " tend each Market day from Nine to twelve, and from Two till five. And  
 " if such Office be not so attended, the Commissioners, Farmers, or Sub-  
 " Commissioners, for each Market day forfeit Ten pounds, to be Recover-  
 " ed by Action, one moiety to the King, the other to the Informer: And  
 " the person coming, and being able to prove a tender by one witness, shall  
 " be excused of all Penalties.

§. 23. " Seventhly, No Common Brewer shall deliver out Beer without  
*Delivery* " notice to the Excise Office, but between *Michaelmas* and our *Lady day*,  
*of Beer.* " between Seven in the Morning, and Five at Night; and between our  
 " *Lady day* and *Michaelmas*, from Three in the Morning, till Nine at Night,  
 " or else forfeit Twenty shillings for every Barrel.

§. 24. " Eighthly, If a Brewer or Retailer shall after any Accompt taken  
*Mixing.* " by the Gagers, of the Quantity and Quality of Beer, Ale, or Wort, mix  
 " his Small Bear with Strong Beer or Ale, and shall deliver out, or retail  
 " the same without giving notice to the Gagers, or shall hide or conceal  
 " his

"his Beer or Ale from the Gagers, shall for every Barrel so mingled or  
"concealed, forfeit Twenty shillings.

"Ninthly, The Utensils or Brewing Vessels whosoever they be, shall *§. 25.*  
"be liable to the Duty and Penalties; and the Duty and Penalties may be *Utensils.*  
"levied thereof.

"Tenthly, If any Commissioner-Brewer that is under a Composi- *§. 26.*  
"tion, shall, during that time, suffer any Beer or Ale to be brewed in his *Brewing*  
"house for another Common Brewer, without first giving notice to the *for others:*  
"Commissioners, Farmers, or Sub-Commissioners of that Division, of  
"how much is to be Brewed, and the quantity and quality thereof; and  
"forthwith paying down the Duty: As well the Brewer by whom, as for  
"whom, shall pay for every Barrel Five pounds; one moyety to the King,  
"the other moyety to the Informer, to be sued for in any Court of  
"Record.

"Eleventhly, No person shall give a Bribe, Money, Fee, or Re- *§. 27.*  
"ward, to any Gager or Officer, to make a false Report or Return; no *Bribe.*  
"sworn Gager, or other Officer, shall so take, upon pain of each Ten  
"pounds: And upon proof by two Witnesses before two Justices by  
"Warrant to levy of the Goods; for want of Goods, imprisonment for  
"three Moneths.

"Twelfthly, No Appeal shall be admitted, unless the Appellant *§. 28.*  
"lay down in the hands of the Commissioners, Farmers, or Sub-Commis- *Appeal.*  
"sioners, the single Duty of Excise, and give Security to the Commissioners  
"of Appeal or Justices, for the Fine and Penalty: And if the Judgment  
"be Reversed, the Commissioners shall restore the Duty, or so much  
"thereof as shall be adjudged. And the party, originally, presented, shall pay  
"double costs; and if affirmed, the party Appealing shall pay the Com-  
"missioners complained of like costs. *Note, The words are not intelligi-*  
"ble, but, as I conceive, some mistake is in the Print; for, it seems, the  
"words should be prosecuting for prosecuted, or some other words to that  
"sense.

"Thirdly, Excise shall be paid for Vinegar, Beer, made to sell in *§. 29.*  
"any other place, as well as in a Common Brew-house. *Vin'gar.*

"Fourteenthly, Colledges and Halls of Universities excepted. *Colledges.*

"Fifteenthly, All Differences, Appeals, and Complaints, touching *§. 30.*  
"Excise, shall be determined in the proper County. *County.*

"Sixteenthly, No Officer of Excise shall take any Money, Fee, or *§. 31.*  
"Reward, for any Bond, Note, or Receipt, touching the Excise, if he do, *Receipt.*  
"shall pay for every offence Ten shillings.

"Seventeenthly, The Justices, or any two of them, or chief Magistrates  
"in all Counties and places, shall meet once a Moneth, or oftner, if occa-  
"sion be, to hear and adjudge Matters of Excise.

"Eighteenthly, One third part of all Forfeitures (not thereby dif- *§. 32.*  
"posed of) shall be to the King, another to the Poor, or third to the In- *Forfeiture*  
"former: And all Fines and Forfeitures, for the Recovery whereof no  
"Remedy is ordained by that Act, shall be recovered by Action of Debt,  
"Bill, Plaint, or Information, in any Court of Record in the County, City,  
"or Corporation, where the offence is committed; or by such other  
"ways and means, and in such manner as is by the said former Act ordain-  
"ed *15 Car. 2. c. 11.*

"Nineteenthly, In London no Appeal to be received, unless commen- *§. 33.*  
"ced within two Moneths after the Judgment; and in the Countrey, *Time of*  
"within four Moneths after the Judgment. *Appeals.*

" Twen-

- §. 34. *Oaths.* " Twentiethly, No Commissioner, Farmer, Sub-Commissioner, or other Person, to be employed in the farming, collecting, or taking Accompts for the Duty of the Excise, shall take upon them that office or proceed in the execution of that employment, until they have taken the Oaths appointed by 12 Car. 2. cap. 23. As is appointed by that Act, and have entered his Certificate of taking the said Oaths with the Auditor of the Excise, under the Penalty of Fifty pounds the Moneth, he shall neglect it.
- §. 35. *Farmers.* " By the Statute of 16 & 17 Car. 2. cap. 4. Farmers of Excise may put in execution such Powers and Authorities, as Commissioners and Sub-Commissioners may do by 12 Car. 2. c. 23. & 15 Car. 2. c. 11. Except the judicial part of hearing Differences, and mitigating Fines and Penalties.
- §. 36. " By an Act of 22 & 23 Car. 2. A duty of Excise is laid upon Liquors for six year, from 24 June, 1671. in these Proportions.  
 " For every Barrel of Beer and Ale Brewed, to be sold above Six shil- 22 & 23  
 " lings the Barrel, 9 d. Car. 2.  
 " For every Barrel of Six shillings, or under, 3 d.  
 " For every Hogshead of Cidar and Perry, made and sold by Retail to be paid by the Retailer, 1 s. 3 d.  
 " For every Gallon of Mead by the Retail, ob.  
 " For every Barrel of Vinegar-Bear, 6 d.  
 " For every Gallon of Strong-Water, 1 d.  
 " For every Barrel of Beer or Ale imported, 3 s.  
 " For every Tun of Cidar or Perry imported, 4 l.  
 " For every Gallon of Low Wine of the first extraction made of Wine, Cidar, or other materials imported, 2 d.  
 " For every Gallon of Coffee, 2 d.  
 " For every Gallon of Chocolet, Sherbet, and Tea, 8 d.
- §. 37. " Which Duty is thereby declared to be ordered in all things as in the former Act, with these additions.
- §. 38. *Waste.* " 1. For Waste and Leakage in every Twentythree Barrels of Beer, shall be allowed three, and in Twenty two Barrels of Ale shall be allowed two.  
 " 2. Penalties for all offences against this Act, shall be thus employed, One moyety to the King, the other to the Informer; but the Penalties may be mitigated, as in the former Acts.
- §. 39. *Liquors imported.* " 3. All Liquors imported, shall be first entred before landed, and duties paid; and every Warrant for the landing, shall be signed by the Collectors of Excise, before the same shall be put ashore, or else it is forfeited, or the value of it; one moyety to the King, the other to the Informer.
- §. 40. *Mixing.* " 4. No private person shall lend his Vessels to be Brewed in, in his house or elsewhere, upon pain to forfeit Fifty pounds.  
 " 5. No Retailer of Beer shall after the Receipt thereof, from a Common Brewer, mix Beer, Ale, or Wort, of an extraordinary strength, with Small-Beer, in any Tub containing three Gallons, or more; and if he do, to forfeit for every Barrel double the duty of Excise, to be heard before the Justices and Commissioners, and they to summon Witnesses: And any person refusing or neglecting to testifie, to forfeit any sum under Forty shillings, to be recovered and disposed, as other Penalties by former Laws.
- §. 41. *Priests.* " 6. No Inkeeper or Retailer to be troubled for selling at greater prices then formerly, during this Act.

Extortion.



## Extortion. CHAP. XXXIX.

- 23 H. 6. 10. " **N**O Sheriff, Under-Sheriff, and their Clerks, Coroners, Stewards of <sup>Fees for</sup> Arrests, <sup>Arrests</sup> Franchises, Bailiffs, Keepers of Prison, or other Officers or Ministers, by colour of their Office, shall take any other thing by them, or by any other person, to their use and profit, of any person to be by them Arrested or Attached, nor of any other, for the permitting any Arrest or Attachment, or of any person, to be Arrested or Attached for Fine, Fee, Suit of Prison, Mainprise, or shewing ease or favor to any prisoner but as followeth, Sheriff 20 *d.* Bailiff 4 *d.* Goaler 4 *d.*
- 23 H. 6. 10. " No Sheriff, Under-Sheriff, Sheriffs Clerk, Steward, &c. or Coroner, <sup>Pannel</sup> shall take for making any Return, or Pannel, and Copy, but 4 *d.*
- " The Sheriffs shall take no more then 4 *d.* for making any Obligation, <sup>Fees for</sup> Warrant or Precept. <sup>Warrant</sup>
- " He that offends shall loose to the party, his treble damages, and <sup>Forfeiture</sup> Forty pounds, viz. A moyety to the King, and the other moyety to the Informer.
- 23 H. 6. 10. " Justices of Peace have power to inquire, hear, and determine of Office <sup>§. 2.</sup> without special Commission.
- " Extortion is an offence by the Common Law, and is punishable by <sup>Fees</sup> Fine, and Imprisonment; and generally Fees shall not be taken at the Common Law: And where any are given by Statute, they may not be increased or enlarged, and that not only in the Court belonging to the Common Law, but in the Ecclesiastical Courts: Concerning all which, how necessary it is, that they be looked into, and moderated, any one may judge, who hath any thing to do in either Jurisdiction, who must needs see, if not feel, they are much increased, to the great oppression of Suiters, beyond the most large pretences and demands of more sober times.
- " For all which Extortions, Bills of Indictment will lie at the Sessions of the Peace, as it is an offence at Common Law, and where special Penalties are provided by Statutes; these must be recovered in the Method and Courts, by such Acts directed.
- " And to speak truth, where any Act is, either by the Common Law or Statutes appointed to be done by any publick Officer, he ought, in virtue of his place, do what is so required without taking any thing therefore, unless by lawful and reasonable usage, he hath a Fee belonging to him, or by Statute any be given him.

## Felony. CHAP. XL.

**E**Very Justice of Peace (by force of the Commission, the first *Assignatus*) may cause fresh Suit, Hue and Cry, and search to be made by the Sheriff, Bailiffs, Constables, and others, upon any Robbery or Theft: And also may cause the Constables to arrest and to imprison all such as shall be suspected to be Thieves, Murtherers, or Felons. *Lamb. 190.*

2 & 3 Ph. & Md. 10. Also every Justice of Peace, may and must take the Examination of all such Felons or Persons suspected for Felony, as shall be brought before him.

See *hic*, cap. 3.

2. And must take Information against them (of those that bring them,) *sc.* of the Fact, and Circumstances of the Felony and Fact.

3. And

3. And must put in Writing such Examinations and Informations, or so much thereof as shall be material to prove the Felony, and must certify the same to the next general Gaol-delivery.

4. And after such Examination and Information taken, then the Justice must commit such Felons to the Gaol, or may bail them if they be bailable; but then there must be two Justices together, and the one of them of the *Quorum*. See *Postea*, tit. *Bailment*. 1 & 2 Ph.  
& Ma. c.  
13.

5. And must bind over (by Recognizance) the Informers (and all such as do declare any thing material to prove the Felony) to appear, and to give evidence against the Felon at the next general Gaol-delivery to be holden within the County, City, or Town-Corporate, where tryal of the said Felony shall be. 2 Ph. & Ma. cap. 10. See *hic*, cap. 3.

If such Informer be unable to travel, &c. then the Justice of Peace may take his Information upon Oath, and may certify the same, *ut supra*, &c. and may forbear to bind such Informer to appear personally before the Justices at the Gaol-delivery, &c.

Note, That in Cases of Treason or Felony, the party accused may require reasonable time to answer any Interrogatories, and having answered, ought to have Copies of his Examination, if he desire it. *Co. Instit.* 2 Part, p. 51. The Cases of *Just. Richil*, 1 Hen. 4. And the Lord *Carew*, 16 Jac.

If the Justice of Peace shall not certify such Examinations and Informations to the next Gaol-delivery, or if the Justices of Peace shall not certify their Bailment, or shall not bind over the Informers to appear, and to give Evidence against the Felon at the next general Gaol-delivery, as aforesaid; the said Justice of Peace shall be fined (for every such default or offence) at the discretion of the Justices of Gaol-delivery. 1 & 2 & 3 Ph. & Ma. 5 & 6 Ed.  
6. 15.  
3 H. 7. 1.

§. 2. But yet if it be for Petty-Larceny, or other small Felonies determinable at the Sessions, the Justice of Peace may bind over the Informers, and may certify the Examinations and Informations to the next Quarter-Sessions of the Peace: And this was the advice and direction of Sir *David Williams* Knight, (late one of the Justices of the *Kings Bench*) at the Assizes at *Cambridge*. For, said he, it was not meet to keep poor Prisoners in the Gaol for small Matters of Felony from one Assizes till another; and therefore he gave order, that the Justices of Peace (at their General Sessions of the Peace) should try and deliver Offenders for small Felonies.

§. 3. Besides, the Justices of Peace of every County, as well by virtue of their Commission, as also by force of the Statutes of 18 Edw. 3. 2. 34 Edw. 3. 1. & 17 Rich. 2. 10. have Authority to proceed to the delivery of Felons, and to hear and determine, and to give Judgment upon all Felonies, whereof any person shall be indicted before them, and are not restrained by the Statutes of Ph. & Ma. but that they may proceed therein before the coming of the Justices of Assize and Gaol-delivery, as it seems, the words of the Commission to that purpose are, *Assignavimus vos Justiciarios nostros ad Pacem, &c. Ac etiam ad inquirend. de omnibus & omnimodis Feloniis, &c. Et ad omnes & singulas Felonias, &c. audiendum & terminandum; & ad delinquentes castigandum & puniendum. Vi. Flo. 485 b.* P. Just. 1.  
18.  
Stamf. 4.  
Li. Int.  
385. Co.  
9. 118.

And for that purpose also, the aforesaid Statutes of 18 Ed. 3. 34 Ed. 3. & 17 Rich. 2. have ordained, That some Learned in the Laws shall be put into the Commission of the Peace in every County within this Realm.

Also there be divers Statutes which by special words did ordain, That the Justices of Peace should have Authority at their General Quarter-Sessions to inquire of, hear and determine certain Felonies. As the Statutes,

P. Just. 14.  
P. Sher. 13.

18 Hen. 6. 19. & 3 Hen. 8. 5. Soldiers departing without License.  
1 Edm. 4. 2. Felonies presented before Sheriffs in their Tourns or

Law days.

P. Just. 11.  
P. Just. 32.  
P. Just. 15.  
P. Just. 74.  
P. Mar-  
tinez, 6.  
P. Robbe-  
ry.

22 Hen. 8. 11. Cutting down of Powdick.

25 Hen. 8. 6. Against Buggery.

8 Eliz. 3. Transporting of Sheep.

39 Eliz. 4. & 1 Jac. 7. Incorrigible Rogues.

39 Eliz. 17. Wandring Soldiers and Mariners.

43 Eliz. 13. Carrying Men forcibly out of Cumberland, &c.

So that the Justices of Peace at their Sessions, may safely proceed to try all Petty-larcenies and small Felonies, and such other Felonies whereto they are authorised by these last recited Statutes: And in such Cases also the Justices of Peace that shall take the Examination of such Felonies, may safely bind over the Informers, and certifie the Examinations and Informations to their next General Sessions of the Peace.

And for Petty-larcenies, and other Petty-felonies, after an Indictment preferred at the Quarter Sessions, if an *Ignoramus* be found by the great Enquest, here the said Sessions, in good discretion, may deliver the Gaol of such Petty-felons; otherwise for all Homicides, Robbery, or other Felonies. *Dir.* 28.

For in Cases of Murther, or other Homicide (by misfortune, or in his own Defence, or other manner,) the Offenders by the Statute of *Glocester* (made 6 Edm. 1. cap. 9.) are to abide in Prison until the Justices of Gaol-delivery shall come into the Countrey to deliver the Gaol. And by the Statute of 4 Edm. 3. cap. 2. Two Wardens or Keepers of the Peace, or Justice of Peace might take Indictments, &c. But the Persons so indicted were to be delivered by the Justices of Gaol-delivery.

But after by the Statute of 18 Edm. 3. cap. 2. beforementioned, Justices of Peace were assigned to hear and determine Felonies, &c. and to inflict punishment according to Law, and the manner of the Deed. And by the Statute of 34 Edm. 3. cap. 1. Justices of Peace had power given them to hear and determine, at the Kings Suit, all manner of Felonies done in the same County, according to Law, &c. And by the Statute of 17 Rich. 2. cap. 10. in every Commission of the Peace, two Men of Law (amongst others) are to this purpose to be Assigned, *scil.* to go and proceed to the Deliverance of Felons, as often as they shall think it expedient.

And yet there are some Felonies which the Justices of Peace cannot hear or try at all, neither can they inquire thereof, nor otherwise deal there-with (as it seemeth:) As namely,

1. First, If any Man being the Kings sworn Servant, (and his name in the *Check-Roll* of his Household) under the degree of a Lord, shall conspire with another to destroy the Kings Majesty, or any Lord of this Realm, or any other sworn to the Kings Council, or the Steward, Treasurer, or Comptroller of the Kings House; every of these Offences are made Felony by the Statute made 3 Hen. 7. But such Offences are by the same Statute appointed to be tryed by a Jury of the *Check-Roll* of the same Household, and before the Steward, Treasurer or Comptroller of the Kings said House.

2. All Murthers or Men-slaughters, committed or done within any the Kings Palaces or Houses, or within the limits or bounds thereof, or within any other House where His Majesty shall happen to be then abiding in His Royal Person, shall be inquired of, tryed, heard, and determined before the Lord Great Major, or Lord Steward for the time being of the Kings Household; and in their absence, before the Treasurer and Comptroller of the same Household, and the Steward of the *Marshalsea*,

H

§. 3.  
Felonies  
not to be  
dealt with  
by Justices  
of Peace.

\* This is  
High Treason. See  
Postea.  
3 Hen. 7. c.]  
14.

or



or two of them, &c. And such Tryal to be by the Inquisition and Verdict of His Majesties Household-servants in the *Check-Roll*, 33 Hen. 8. cap. 12.

3. Imbezilling of any Record, Writ, Return, Panel, Process, or Warrant of Attorney, in the *Chancery*, *Exchequer*, the one Bench, or the other, or in the Treasury, whereby any Judgment shall be reversed; every such Offence is made Felony in such Imbezillor, Stealer, or Taker away, and in their Procurers, Counsellors, and Abettors, by the Statute of 8 H. 6. But 8 H. 6. c. 12. such Offences are by the same Statute appointed to be tried by a Jury of Twelve Men, whereof the one half to be of the Men (*scil.* of the Officers and Attorneys) of the same \* Courts, who shall be sworn before the Judges \* P. Fel. 18 of the said Courts, *scil.* of the one Bench, or of the other, to inquire of that Offence: And if they shall indict the Imbezillors of such Record, &c. they shall be arraigned thereupon before the same Judges, as in Cases of other Felonies.

4. Rasing of any such Record is also Felony, within the said Statute of 8 H. 6. and to be tried as aforesaid. *Br. Cora.* 174.

\* Note, the entering of a false Will Nuncupative, is not properly Forgery, but it must be of a Will in writing. *Miller's Case*, 2 Jac. C. B.

5. Forging of any Deed or Writing sealed, or of any Court-Roll, Will, or Acquittance, or to cause or assent to be made any such forged Writing, or to publish or shew forth in Evidence any such forged Writing, knowing the same to be forged; if any person being once lawfully convicted of any of the said Offences, shall afterward commit any the said Offences again, every such second Offence is made Felony by the Statute of 5 Eliz. But by the same Statute such Offences are to be inquired of, heard and determined, by and before Justices of Oyer and Terminer, and Justices of Assize. 2 R. 3. fol. 10.

And therefore whereas one *R. Smith* was indicted at the Sessions of the Peace in the County of Oxford, upon the said Statute of 5 Eliz. for forging of a false Deed, it was adjudged by the whole Court in the *Kings Bench*, 30 Eliz. that the same Indictment was not well taken: For although the Justices of Peace by their Commission have power (of Oyer and Terminer) to hear and determine Felonies and Trespases, &c. and have in their said Commission an express Clause, *Ad audiendum & terminandum*, and so are Justices of Oyer and Terminer, yet it was resolved by the Court, That sofar as there is a Commission of Oyer and Terminer known distinctly by that name, and the Commission of the Peace is known distinctly by another name, the said Indictment taken before the Justices of the Peace at their Sessions, was not well taken; therefore it was quashed. Co. 9. 118. Cro. 120.

The Reason of this last Case and Judgment, seemeth to hold in the former Cases, and in all other like Cases, where any Statute doth specially give Authority to any other distinct Court, or to other Justices or Commissioners, (leaving out the Justices of Peace) to inquire of, hear, and determine, or to try Felons, &c. There the Justices of the Peace (at their Sessions) cannot inquire thereof, &c.

6. Servants imbezilling or taking away the Goods of their deceased Master, the Executors of the party deceased may have a Writ directed to the Sheriffs, to make open Proclamation two Market days, that such Offenders shall appear in the *Kings Bench* at a certain day. And if such Writ be returned, that Proclamation is thereupon made accordingly, then, if the said Persons, which should appear by reason of the said Proclamation, do make default, and do not appear in the *Kings Bench* at the

33 Hen. 6.  
C. 1.  
Raff. pl. 50.  
552.

the day specified in the said Writ, they shall be attainted of Felony, by the Statute of 33 Hen. 6. So that such Offence of Servants imbezilling their said Masters Goods, beginneth first to be Felony upon their default of appearance in the *Kings Bench* after Proclamation; of which default the Justices of Peace cannot take notice, for that they have not before them the Record of such default, or not appearing; and therefore the Justices of Peace cannot inquire of such Felony, &c. *Crompt. 56. Lamb. 529.*

But in the former Cases, If any such Offender shall be brought before any Justice of Peace, and charged with any such Felony. *Quere*, How far the Justice of Peace is to deal, or what he is to do therein, considering the Justices of Peace are no Judges of such Felonies; neither have they any Jurisdiction given them by the Statutes in such Cases: And yet for that, they are by their Commission authorised to deal with all Felonies, as also with all Offences against the Peace of the King and Realm, of which sort all these last recited Offences are. *Quere*, If the Justice of Peace shall not do well to examine the Offence, and then to certify his Examination to such persons as by the Statute are made Judges of the Cause; and also to commit such an Offender to Prison, to bind over the Informers, and to take their Information upon Oath.

Again, If a man had been Feloniously stricken in one County, and after died thereof in another County, (by the Common Law) no Indictment could be taken in either of the said two Counties, for that the Jurors of the County where such party died (of such stroke) could not take knowledge of the said stroke, (being in a Foreign County,) nor the Jurors of the County, where the stroke was given, could not take knowledge of the death in another County. But now by the Statute of 2 & 3 Edw. 6. an Indictment thereof found by Jurors of the County where the death shall happen (whether it shall be found before the Coroner, or before Justices of Peace, or other Justices, &c.) shall be good and effectual in Law: And that the Justices of Gaol-delivery, and Oyer and Terminer in the same County, where such Indictment shall be taken, shall and may proceed upon the same, as if such stroke and death had been all in one and the same County.

§. 4.  
Wound in  
one County,  
Death in  
another.

Co. Instit.  
3. part. p.  
135.  
Raff. pl. 52

Also where Felons had robbed or stolen Goods in one County, and after conveyed their spoil, or Goods so stolen, into another County to their adherents there, who, knowing of such Felony, received the same Goods. In this Case, although the Principal were after attainted, the Accessary notwithstanding escaped, by reason that he was Accessary in another County, and that the Jurors of the said other County (by the Common Law) could take no knowledge of the principal Felony in the first County. But now by the said Statute of 2 & 3 Edw. 6. It is Enacted, That where any Murther or Felony shall be committed and done in one County, and other Persons shall be Accessary (in any manner) to any such Murther or Felony in any other County, that an Indictment thereof found or taken against such Accessary before the Justice of Peace, or other Justices, &c. in the County where such offence of Accessary shall be committed, shall be good and effectual in Law; and that the Justices of Gaol delivery, or Oyer and Terminer, of, or in such County where the Offence of any such Accessary shall be committed, shall write to the *Custos Rotulorum* where such Principal shall be attainted or convicted, to certify them whether such Principal be attainted; convicted, or otherwise discharged of such Felony; and thereupon the

Co. §. 117.

*Custos Rotulorum* shall make Certificate in writing under his Seal to the said Justices accordingly: And then the Justices of Gaol-delivery, or Oyer and Terminer, shall proceed upon every such Accessary in the County where such Accessary became Accessary, as if both the principal Offender and Accessary had been committed and done in the said County where the offence of Accessary was committed.

So as by the Letter of this last recited Statute, the Jurisdiction over these last recited Felons, and over such Accessaries, is not committed to the Justices of Peace, to proceed to the Tryal of them; but this Authority is remitted to the Justices of Gaol-delivery, or of Oyer and Terminer: Yet the Justices of Peace may examine these Offences, and take Information against the Offenders, and certifie the same to the next General Gaol-delivery, and may bind over the Informers, and commit the Offenders: Also the Justices of Peace may inquire thereof, and take Indictments against them, as in other Cases of Felony.

- §. 5. 8. Lastly, the Justices of Peace (at their Sessions) cannot make Tryal of such as be indicted of Felony before Coroners, or before the Justices of Gaol-delivery, or of Oyer and Terminer, unless the same persons (*scil.* the said Coroner, Justices of Gaol-delivery, or of Oyer and Terminer) were also Justices of the Peace in the same County, so as the Indictment may be understood to be taken by them, as before Justices of the Peace. For the Commission of the Peace, and the Authority of Justices of the Peace, extendeth only to try such as stand indicted before themselves, or before former Justices of the Peace, or before the Sheriff in his Tourn, or the Steward in a Leet. See *Lamb.* 486. & *Stat.* 1 *Edw.* 4. c. 2. & *Stamf.* 87. for Indictments taken in the Sheriffs Tourn. And for Indictments taken in Leets, see *Br. tit. Leet.* 1. And yet by the Book 8 *Hen.* 4. fol. 18. it seemeth, That Indictments or Presentments of Felony taken in the Leet shall be delivered over to the Justices of Gaol delivery. *Br. Frank.* 5.

Lam. 530.

§. 6.  
*Treason.*

Also in some Cases of Treason and Misprision of Treason, the Justices of Peace may inquire, and take Indictments, but cannot proceed to Tryal, or to hear and determine the same:

As of Maintainers of the Authority of the Bishop or See of Rome, 5 *Eliz.* 1. and of their Procurers and Maintainers, &c. the Justices of Peace in 23 *Eliz.* 1. their Quarter Sessions may inquire of such Offences; but they must certifie every Presentment thereof made before them into the *Kings Bench* (within Forty days, upon Forfeiture of an hundred pounds by every Justice of Peace there present, not making Certificate accordingly) 5 *Eliz.* cap. 1.

2. So of such as shall obtain from Rome, &c. any Bulls, or Absolution; or shall publish, or put in ure any such Bull; or shall give or take Absolution by colour of any such Bull. 13 *Eliz.* 2. 23 *Eliz.* 1.

And their Procurers and Maintainers, &c.

And the Concealers of such Bull or Absolution offered to them.

3. So of such as shall withdraw any Subject from the Religion now used, to the *Romish* Religion; or from their Obedience to the *Kings Majesty*, or to the Obedience of the Pope, &c. 23 *Eliz.* 1.

And of such as shall be so withdrawn.

And of their Procurers and Maintainers, &c.

And of the Concealers of such Offences.

4. So of such as shall bring into this Realm any *Agnus Dei*, or other Superstitious Pictures, or Beads; or shall deliver, or offer any such to any Subject. 13 *Eliz.* 1. 23 *Eliz.* 1.

And



And of the Receivers of such Superstitious things.

For all these last recited Offences against the Statutes of 5 Eliz. 1. 13 El. 2. & 23 Eliz. 1. See more fully *Postea*, tit. *High Treason*.

And if any such Offender against any of these last mentioned Statutes shall be brought before any Justice of Peace, and charged with any such Offence, it shall be the Justices part, to take the Examination of such Offenders, and to bind over the Accusers and (material) Informers to appear (and to prefer a Bill of Indictment, and thereupon to give in Evidence to the Inquirors against such Offenders) at the next Quarter Sessions (as it seemeth) or rather at the next Assizes, or General Gaol-delivery, or else in the *Kings Bench*, whensoever (upon reasonable warning) they shall be thither called; and then to commit the Offender to the Gaol; and after to certify the said Examinations, Informations, and Recognizances (by him taken) to the said Sessions, or Gaol delivery, or into the *Kings Bench*, &c.

In other Cases of High Treason, or Misprision of Treason, what the Justices of Peace out of their Sessions, shall do with such Offenders brought before them. See *Postea*, tit. *Misprision*.

But now to return to the business of the Justices of Peace out of their Sessions.

If one shall bring a Man, suspected of Felony, before any Justice of Peace, but refuseth to be bound to give Evidence against the Prisoner (either at the General Gaol-delivery, or Quarter-Sessions, as the Case shall require;) if such Bringer hath given Evidence before the said Justice against the Prisoner, or can declare any thing material to prove the Felony, and will not be bound to give Evidence upon his Tryal, the Justice of Peace (upon his discretion) may commit to Prison such Person so refusing, or may bind him to his Good Behavior, 'and to appear at the next Gaol-delivery or Quarter-Sessions.' But if the Bringer of a Person suspected of Felony cannot declare any thing material to prove the Felony, nor any other Person then present, it seemeth the Justice ought not to commit the Prisoner: And so was the Direction of Sir David Williams at the Assizes of *Cambridge* aforesaid. Yet the Justices shall do well to examine the Prisoner, and if he shall confess the Felony, then to commit him; or if upon his Examination there shall appear any just cause of suspicion, or if the Prisoner be a Man of evil fame, and that there be a Felony committed. In these Cases, the Justice shall do well not to let him go, but at least to bind him over to the next Gaol-delivery, and in the mean time to take farther Information against him. See the other title *Felony*, *Postea*.

*Fairs*, vid. tit. *Markets*.

#### Fees. CHAP. XLI.

“**G**enerally, as I have said elsewhere, Any Publick Officer shall take “no other Fees or Rewards, for doing any thing relating to his Office, then some Statute in force gives him; or else, as hath been anciently and accustomably taken: And if he do otherwise, he is said to do it *colore officii*, and he is therein guilty of Extortion. I shall therefore, for the Justices of Peace direction herein, to take notice of some Fees, they and others are to take and leave them, to inquire for the rest in some proper titles in this Book.

- §. 2. *Sessions Fees.* "Every Justice of Peace may for every day they keep their Sessions (which by that Statute may be three days) take Four shillings, and their Clerk Two shillings *per diem*, of the Fines and Amercements coming of their Sessions by the Sheriffs hands, but by 14 Rich. 2. 11. No Duke, Earl, Baron, or Baronet (so is the Print in *Pulton*, but the Original is Banneret) albeit they be assigned Justices, and hold their Sessions with others, shall take any wages for their Office. 12 R. 2. 10. 14 R. 2. 11.
- §. 3. *Exco. ment.* "Where Inrolments are to be made of Deeds, if the Lands exceed not the yearly value of Forty shillings, the Justice and Clerk shall take Two shillings, *viz.* One shilling the Justices, and one shilling the Clerk. And if it exceed Forty shillings *per annum*, then Five shillings, *viz.* the Justices Two shillings six pence, and Clerk Two shillings six pence. *Vide postea Inrolment.* 27 H. 8. 16.
- §. 4. *Alehouse.* "The Party Licensed to keep an Alehouse, shall pay for the Recognizance directed by 5 & 6 Edw. 6. c. 25. but Twelve pence. 5 & 6 E. 6. 25.
- Licence.* "Every Licence to be a Badger, Drover, Lader, Kidder, Carrier, or Buyer of Corn, &c. shall be made by the Clerk of the Peace only; for which he shall take Twelve pence and no more. 5 Eliz. 12.
- Laborers.* "Justices of Peace, Majors, and Head-officers, for every day they sit in Execution of the Statute of Laborers (not exceeding three days at one time) shall take Five shillings *per diem*, each out of the Fines and Amercements happening by that Statute. 5 Eliz. 4.
- Gun.* "The Clerk of the Peace shall take for a Licence to shoot in a Gun for Hawks-meat, Twelve pence and no more. 1 Jac. 27.
- §. 5. *Wills and Administration.* "Where the Goods amount not to 100 s. nothing shall be taken for the Probat of a Testament, saving Six pence to the Scribe for writing, and so for an Administration, the Testament being exhibited to him with Wax; and if the Goods exceed 100 s. and not Forty pounds, the Party shall pay for the Plea, but Three shillings six pence, *viz.* Two shillings six pence to the Ordinary, &c. and Twelve pence to the Scribe. And if the Goods exceed Forty pounds, then to pay Five shillings, whereof Two shillings six pence to the Ordinary, and Two shillings six pence to the Scribe, or else the Scribe may refuse Two shillings six pence, and take One penny for every Line containing Ten inches: And the Party shall pay for Administration where the Goods exceed 100 s. and not exceeding Forty pounds, Two shillings six pence, and not above. And if any person require a Copy of the Testament or Inventory, the Ordinary, &c. shall deliver it, taking only such Fee as is to be taken for Probat, or else the Scribe may take One penny for every Line being Ten inches: But as to Seamens Estates and Administration thereof granted, there are certain Fees appointed by a Statute made 22 & 23 Car. 2. 21 H. 8. 1. 22 & 23 Car. 2.
- Testimonial.* "The Parson, Vicar, or Curate of a Parish, shall take for the making of a Testimonial of a Servant, &c. but Two pence. 5 Eliz. 4.
- Citation.* "No Ordinary shall take for the Seal of any Citation above Three pence. 23 H. 8. 94.
- §. 6. *Coronor.* "No Coronor shall take above Thirteen shillings four pence for his Fee, upon view of the Body, of the Goods of the Slayer or Murderer of any; or else of the Amerciaments, upon any Parish for an escape, and nothing where the person is dead by Misadventure. 3 H. 7. 1. 1 H. 8. 7.
- "As for the Fees in Sessions, for Traversing, Trying, or Discharging Indistments, Discharging Recognizances of the Peace and Good Behavior,

"Behaviour, &c. These vary according to the Custom of the Country,  
"and in that case *Consuetudo loci est observanda*

"As to the Justice of Peace himself touching Fees or Profit by him to §. 7.

"be taken, his Oath ought to direct him, which is as to that purpose. *See the*

"That you take nothing for your Office of Justice of Peace to be done *Oath.*

"but of the King, and Fees accustomed, and Costs limited by the Sta- c. 1. §. 2.

"tute.

### Fish. CHAP. XLII. V. 21.

West. 2.

47.

13 R. 2. 19.

P. Fish. 1.

P. Just. 14.

**E**very Justice of Peace is a Conservator of Rivers, and of the Statutes §. 1.  
made in that behalf, (*sc.* of the Statutes of 13 Ed. 1. cap. 47. 13 R. 2. *Conservat-*  
cap. 19. & 17 R. 2. cap. 9.) within his County where he is a Justice, and *ors.*  
may appoint and swear Under-Conservators; and (when he may attend  
it) ought to survey all the Wears in the Rivers, that they be of a reason-  
nable wideness, and all other defaults done against the aforesaid Sta-  
tutes.

Every Justice of Peace may burn the Nets and other Engines put or cast *Nets.*  
into Waters, wherewith the Fry or Breed of any Fish may be taken or de-  
stroyed; and this shall be for the first Offence: and for the second Offence  
the said Justice of Peace may (as it seemeth) imprison such Offenders for  
a quarter of a year; and for the third Offence, One whole year: and as  
the Trespas or Offence increaseth, so may the Justice of Peace increase the  
Punishment of such Offenders. See the Statutes 13 E. 1. 47. 13 R. 2. 19.  
& 17 R. 2. 9.

2. Infrir.

P. 453.

"To speak it once for all, where a penalty is appointed upon Conviction  
"of a third Offence, it must be intended (if not expressed in that Statute)  
"that there be, and ought to be Convictions for the first Offence, and so  
"for the second, before the person shall incur or bear the penalty for the  
"third Offence; and the third Offence must be committed after the se-  
"cond Offence, and Conviction thereof, that is, lawful Judgment given for  
"the second, and so the second after the first.

3 Jac. 12.

By Warrant of any one or more Justices of Peace, the Constables and  
Church-Wardens (where any Offence is committed in destroying the  
Spawn and Brood of Sea-fish, against the Statute made 3 Jac. Regis) may  
levy the Forfeitures of the Offenders by Distress and Sale of the Offen-  
ders Goods, rendring to the Offenders the surplusage.

The Particulars of the said Statute 3 Jac. Regis are as followeth:

§. 2.

1. No person in any Haven, Harbour, or Creek, or within Five miles of  
the mouth of any Haven, Harbour, or Creek of the Sea, shall fish with any  
Draw-net, or Drag-net under Three inches meash, (*viz.* One inch and an  
half from knot to knot) except for taking of Smoulds in Norfolk only;  
and except for taking of Herring, Pilchards and Spicots.

2. No person in any Haven, Harbour, or Creek, or within Five miles of  
the mouth of any Haven, &c. shall fish with any Net with Canvas, or  
other Engine or Device, whereby the Spawn, Fry or Brood of any Sea-fish  
may be destroyed.

3 Jac. 12.

And for every such Offence the Offenders shall forfeit their Nets, and  
Ten shillings in Money; the one half thereof to be to the use of the Poor  
of the Town or Parish where the Offence shall be committed, and the other  
half to him that will sue for the same; and to be levied by the Mayor or  
other Head-Officer of every City, Borough, or Town-Corporate, or by  
Warrant from one or more Justices of Peace, *Ut supra*.

Touch-



“Touching the fishing for Pilchards, &c. in *Cornwal* and *Devon*, see the said Act. And for general fishing, the Act of 15 Car. 2. cap. 14.

§. 3. *Imported.* “If any Ling, Herring, Cod or Pilchard, fresh or salted, dried or bloated, or any Salmon, Eeles or Congers taken by any Forraigners, Aliens to this Kingdom shall be imported, sold, uttered, or exposed to sale in *Eng-land*; any person may seize it; one moyety to the Seizer, the other to the poor, where seized. 18 Car. 2. c. 2.

§. 4. *Assemblies.* “No suspicious or idle person, shall in the night time assemble or gather together about the Boats, Nets or Cellars belonging to any Pilchard-Craft upon the Coasts of *Devon*, and having no business there, and having notice by the Company to be gone; Every person so refusing upon Complaint to a Justice of Peace shall pay Five shillings to the Poor, or be set in the Stocks Five hours. 14 Car. 2. c. 28.

§. 5. “If any person shall use any Casting-net, Chief-net, Drag-net, Trammel-net, Shove-net, or other Net whatsoever; or any Angle, Hair noose, Troll or Spear, or shall lay any Wear, Pots, Nets, Fishhooks, or other Engines, or shall take any Fish by any other means or device whatsoever, in any River, Stew, Pond, Mote, or other Water; or shall be aiding and assisting thereunto, without the consent of the Lord or owner of the Water, and be convicted by Confession, or Oath of one Witness before one Justice of Peace of the County, Division, Riding or Place shall recompence the party such Damages, and within such time as the same Justice shall think fit, not exceeding treble Damages, and pay to the Overseers for the use of the Poor such sum of Money as the Justice shall think fit, not exceeding Ten shillings, and in default of payment to be levied by Distress and Sale of Goods; and for want of Distress to commit the Offender to Prison for such time as the Justice shall think fit, not exceeding one moneth, unless he shall by Bond with one competent Surety or Sureties be bound to the parties injured, not exceeding Ten pounds never to Offend in like manner. 22 & 23 Ca. 2.

“If a Fishmonger sell Fish at unreasonable prices, he is punishable for it by Indictment. So likewise, if a Maulster buy Barley and sell the Mault at unreasonable prices, he is punishable for the same by Indictment.

“P. 12 Jac. Rolls, part 15. 11.

*Fesants vide Partridges.*

### Fish-days. CHAP. XLIII.

Every Justice of Peace, in the Lent time, may enter into and search all Victualling-houses, and finding there any Beef, Mutton, Veal, or Hogs killed or dressed, (except Flesh to be killed Three days next before *Easter*) may take and seize the same as forfeit, and shall give the same to Prisoners, and other poor Folks, by their discretion.

### Forcible Entry. CHAP. XLIV. V. 22.

§. 1. *What is Forcible Entry, and what is a Forcible Holding or Detainer;* see the other title, *Forcible Entry, hic possea.*

§. 2. *One Just.* Every Justice of Peace, upon complaint to him made, or upon other notice to him given, of any Forcible Entry into, or Forcible holding or Detainer of possession of any Lands, Tenements, or other Possessions (or

(or of any Benefices or Offices of the Church) contrary to these Statutes, without any examining, questioning, or standing upon the Right or Title of either party, ought in convenient time (at the costs of the party grieved) to do Execution of these Statutes in manner and form here under following. See *Lamb.* 150.

15 R. 2.2.  
Lamb. 152

1. First, he ought to go to the place where such Force shall be. And he may take with him sufficient power of the County, or Town, by his discretion, and the Sheriff also, if need be, to aid him, for the better Execution of this business; *sc.* as well for the arresting of such Offenders, as also for the removing of the Force, and for the conveying of them to the next Gaol. And whosoever (of that County) shall refuse to attend and assist the Justice of Peace herein, shall be imprisoned, and make Fine to the King. 15 R. 2. cap. 2. §. 2. View.

2. He ought to arrest and remove all such Offenders as at his coming he shall see or find continuing the Force; and may take away their Weapons, Harness, and Armour, and presently cause them to be prized, and after to be answered to the King as forfeited, or the value thereof. *Vide Libr. Intrat. tit. Faux. Imprisonment, di. 7.* Arrest.

If the doors be shut, and they within the house shall deny the Justice to enter, it seems he may break open the house to remove the Force.

But if such Offenders, being in the house at the coming of the Justice, shall make no resistance, nor make shew of any Force, then the Justice cannot arrest or remove them, except, upon the Enquiry after, a Force be found. See *Crompt.* 73. and the other title, *Forcible Entry*.

Crompt. 71

Also if the House or Land which is holden with Force shall extend into Two Counties, and the Offenders remove their Force into that part of the House or Land which is in the other County, when the Justices do come, they cannot then remove the Force.

And if the Justice at his coming shall see or find a Force, and shall remove the Offenders, yet he may not upon this his own view restore the party ousted to his Possession again, without Inquiry first made of the Force by a Jury, as appeareth hereafter. §. 3. Restitution.

14 H. 7.8.  
Co. 8.121.

3. Also the Justice ought to make a Record of such Force by him viewed; which Record shall be a sufficient Conviction of the Offenders, and the parties shall not be allowed to traverse it. §. 4. Record.

Lamb. 15.  
163. &  
375.

And this Record (being made out of the Sessions by a particular Justice) the said Justice may keep by him; or he may make it indented, and certify the one part into the King's Bench, or to leave it with the Clerk of the Peace, and the other part he may keep himself.

The Form of the Record; see the other title, *Forcible Entry*, among the Precedents.

21 H. 6. 5.  
Br. Peace  
4.  
Co. 8.120.  
P. 2.

4. Also he ought to commit (immediately) to the next Gaol all such persons as he shall find and see continuing the Force at his coming to the place; the said Offenders there to remain convict by his own Eye, Testimony and Record, untill they have paid a Fine to the King, (or given Security for the payment thereof:) for this Sight and View of the Force by the Justice (being a Judge of Record) maketh his Record thereof (in the Judgment of the Law) as strong and effectual, as if the Offenders had confessed the Force before him; and (touching the restraining of Traverse) more effectual, then if the Force had been found by a Jury upon the Evidence of others. §. 5. Imprison.

P. 2.

And yet the words of the Statute seem more large; *sc.* And if he do find any that made any such Forcible Entry, or that hold the place with Force, &c. he shall commit the Offenders to the Gaol, &c. But such Force must

must be in the presence or view of the Justice of Peace, or else he can neither Record it, nor yet commit the Offenders. 13 H. 7. *Crook*. 41. Crom.  
195. b.

The form of the *Mittimus*; see the other title, *Forcible Entry*.

§. 6. *Fine.* 5. Also the same Justice of Peace, or some of them that shall see the Force, (as having best knowledge of the matter, and of the quality of the Offence, and having the custody of this Record) are the proper Judges of this Offence; and therefore may assess the Fine upon every such Offender: but the Fine must be imposed upon every Offender severally and not upon them jointly: and the Justice ought to Estreat the same Fine, and to send the Estreat into the Exchequer, that from thence the Sheriff may be commanded to levy the said Fine for His Majesties use. But upon the same Fine so Assessed and Estreated, it seemeth the Justice is to deliver the Offenders. Co. 2. 41. 2  
Lam. 193.  
597.  
Co. 11. 43.  
a.

*Lamb.* 554.

Also upon payment of the said Fine to the Justice, or upon Sureties found (by Recognizance) for the payment thereof, the said Justice may deliver the Offenders out of Prison again at his pleasure, by some opinions: But *quære* whether the Justice of Peace shall meddle with receiving the Fine, for that the Sheriff is accomptant for all Fines. *Lamb.* 555. Lam. 162;  
555.  
Br. Imp.  
10.

Or the Justices of Peace (by some opinions) may Record such Force, and commit the Offenders, and after certifie the Record to the Justice of Assises and Gaol-delivery, (as it was done at *Stafford Assises*, *An.* 26 *Eliz.* by the report of Mr. *Crompton*;) or else to certifie it to the General Sessions of the Peace, (as it seemeth to Mr. *Crompton*) and there the Offenders may be Fined; for, saith he, the Statute doth not say, that the Fine shall be Assessed by them that Record the Force, more then by other Justices. Cromp.  
161.  
Lam. edit.  
1582.

Or rather the Justice of Peace may certifie or deliver the Record by him made (and refer the Fine and farther proceedings therein) to the King's Bench (in regard of their supreme Authority in such cases.) And this Mr. *Lamb.* thinketh to be the safest course. Lam. 163.

§. 7. *Enquiry.* 6. Also the Justice of Peace, notwithstanding his own view of the Force, may and ought in some good Town or Place, near where the Force was (at the costs of the party grieved) to enquire by a sufficient Jury of the same County, to be returned by the Sheriff, as well of those which made such Forcible Entry, as of those which made such Forcible Detainer. See the Stat. 8 H. 6. cap. 9. & *Plq.* 86. a.

And here note, that any one Justice of Peace alone out of the Sessions may make an Enquiry (being so appointed by the Statute;) whereas otherwise there must be Two Justices at the least, to make an Enquiry, or to hold a Sessions, and one of them of the *Quorum*. *Br. Peace* 14.

And this Enquiry ought to be made, whether the Offenders be present or gone, at the coming of the Justice of Peace; yea, this Enquiry the Justice must make, though he go not to see the place where the Force is; for without this Enquiry there can be no Restitution, see more concerning this Enquiry in the other Title, *Forcible Entry*, &c. Br. Forcib.  
27.

Also by the words of the Statute of 8 H. 6. cap. 9. (*maintenant mesme les Justices doivent enquirir*, &c.) the Justices are to make this Enquiry immediately after the Force committed, and complaint made to them by the party grieved; and yet if they do make this Enquiry at any convenient time after, it sufficeth. *Cromp.* 124.

§. 8. If the Sheriff shall not duly execute the Justices Precept directed to him for returning a Jury, he shall forfeit 20 l. And the Justice of Peace may proceed to Hear and Determine such Default of the Sheriff. See 8 H. 6. cap. 9. *hic postea*.

The



The form of a Precept to the Sheriff to return a Jury, *vide hic*.

The form of the Enquiry, Presentment or Verdict. See *hic*.

7. And if upon such Enquiry such Forcible Entry (or Forcible holding, or Detainer) shall be found by the Oaths of the Enquirers, then the said Justice of Peace shall re seize the Lands and Tenements so entred upon or holden, and thereof put the party in possession again, who in such sort was put out or holden out. See the other Title of *Forcible Entry*. §. 9. Restit.

But the putting out, as also the holding out, must of necessity be found, and that by express words in the Indictment. See as before.

And so note, that the Justice or Justices of Peace, recording only the Force by his or their view, may not put the party put out into his possession again, but the Justice must first make Enquiry thereof by Twelve men of the County at a special Sessions by the said Justices to be holden; and then the Force being found by the said Jury, the said Justice or Justices may put the party so put out into his former possession.

And this Restitution the Justice of Peace may make himself; or he may make his Warrant to the Sheriff to do it: or else he may certifie such Presentment or Indictment taken before him, into the King's Bench, and so leave the Restitution to be awarded out of that Court. See as before.

Co. 9. 118.  
Co. 11. 64.  
7 E. 4. 18. But the Justices of Assize and Gaol-delivery, nor the Justices of Peace at their General Sessions, cannot (as it seemeth) make or award Restitution, except the Indictment were found before them; but the Justices of Peace only, or some of them, that were present at the Enquiry, and when the Indictment was found, they only have power to make Restitution; except notwithstanding the Justices of the King's Bench, who have a supreme Authority in all cases of the Crown.

And therefore if the Record, *sc.* the Presentment of such Force, shall be delivered by the Justices of Peace into the King's Bench, or that the same Presentment or Indictment shall be removed and certified thither by *Certiorari*, there the Justices of the King's Bench may award a Writ of Restitution to the Sheriff of the same County, to restore possession to the party so expelled.

P.R. 41.b. After it is found by such Enquiry, that such Forcible Entry or Detainer is made, the Justice of Peace may break open the house by force, to re seize the same, and to put the party, so put out, in possession again. And so may the Sheriff do, having the Justices Warrant.

The form of such Warrant from the Justice of Peace to the Sheriff to make Restitution. See in the other Title, *Forcible Entry*.

But the Justice of Peace may not (in any case) make Restitution without such Enquiry first had, and such Force thereby found: and if the Justice shall make Restitution without Enquiry, it seemeth to be punishable.

Also this Restitution ought to be made to none, but to him only that was put out; so that if the Father be put out by Force, and dieth (after Enquiry, and before Restitution,) his Heir shall not have Restitution.

To whom Restitution shall be made. See the other Title, *Forcible Entry*.

Also such Restitution must be made only, where a man is put out, or holden out, &c. Of House or Land, and is not to be understood of a Rent, Common, Advowson, or such like. See the other Title, *Forcible Entry*.

Also the Justice may make Restitution, notwithstanding any offer of Traverse; but yet upon Traverse tendred, the safest way (for the Justice of Peace) seemeth to be for him to deliver or certifie the Presentment into the

the King's Bench, and so to refer the farther proceedings therein to them. See the other Title, *Forcible Entry*.

§. 10.  
Default of  
the Justices.

And although these Statutes do inflict no penalty upon the Justices of Peace, if they shall not execute these Statutes; yet if upon complaint (or other notice given of such Force) they shall not at least remove the Force; record it, and commit the Offenders, they are punishable.

In the Case of *Drayton Bassett* (in the County of *Stafford*) about *An. 22 Eliz.* certain Justices of Peace of that County, although they dwelt not near to the place) where a great Riot was committed by a Forcible Detainer, were for their Default fined in the *Star-Chamber*, upon the Statute of 17 R. 2, c. 8. (as *M. Crompton* reporteth) which Statute is, That the Sheriff, and all other the Kings Officers, shall suppress Rioters which shall Assemble themselves in outrageous or great numbers. See *Crompt. Author. des Courts, fol. 32.*

Although the Justice of Peace ought to commit to the Gaol, and may fine all such as he shall see continuing their Force at his coming to the place; yet upon Force found by the Enquiry only, and not viewed and seen by the Justice, (although this Presentment of the Jury be a Conviction of the Offenders, yet) it seemeth the Justice of Peace may neither fine nor send to the Gaol the said Offenders, by the Statute of 8 H. 6. which appointeth the Enquiry: for the Justice hath power by the said Statute to make Restitution only, as saith *M. Lambert 162.* yet *M. Crompton* holdeth the contrary, *sc.* that the party indicted shall be fined for the Force found, although the Statute of 8 H. 6. speaketh not of the Fine.

But howsoever the Justice of Peace (upon Force found by the Enquiry) is to remove the Offenders that be present, that so he may restore the other, and may bind the Offenders to their Good Behaviour; and if the Offenders be gone, yet the Justice may make his Warrant to take the Offenders, and may after send them to the Gaol, untill they have found Sureties for their Good Behaviour. *Crompt. 161 b. 162 a.*

Note, that if such Forcible Entry or Detainer shall be made by Three persons or more, then it is also a Riot; and then (if there be no former Enquiry thereof made) it seemeth the Two next Justices of Peace (upon notice thereof) ought to enquire thereof (as a Riot) by a Jury, within One moneth, upon pain to either of them making default to forfeit 100 l. *Cro. 68 b.*

§. 11.  
Defaults of  
Sheriffs.

Also One Justice of Peace may (as it seemeth) Hear and Determine the Defaults of Sheriffs and Bailiffs, in not returning sufficient Jurors (whereof every one shall have Lands, &c. to the value of Forty shillings by the year at the least) before him, to enquire of such Forcible Entry or Detainer; and the said Justice of Peace may proceed therein as well by Bill, at the Suit of the party grieved, for himself, as also by Indictment only for the King; and the same Process shall be made against such persons Indicted or Sued by Bill in this behalf, as should be made against persons Indicted or Sued by Writ of Trespass with Force and Arms against the Kings Peace. What the Process in such case is, *vid. tit. Process.* *8 H. 6. 9. P. Just. 8. 9. Rast. 174 c.*

Two Justices.

And though any one Justice of Peace may proceed in every of these former Cases of Forcible Entry or Detainer, as aforesaid, yet if Two or more Justices shall joyn therein together, it is the better; for, *Plus vident oculi quam oculus; & securius expediuntur negotia commissa pluribus.* Co. 4. 46.

Corporate  
Towns.

Also the Mayor, Justice or Justices of Peace, and the Sheriffs and Bailiffs of Cities and Boroughs having Franchise, shall have in the said City, Towns and Boroughs, like Authority to remove such Entries, and to inquire *8 H. 6. 9. Rast. 174 d.*

quire of such Entries, or putting or holding out, and in other Articles aforefaid rifing within the fame, as the Juftices of Peace and Sheriffs in Counties and Shires have.

2 Ed. 3.3.

Also every Juftice of Peace, to whom a Writ upon the Statute of Northampton concerning the removing of a Force fhall be delivered, ought to execute the fame Writ, *fc.* he ought to remove the Force, and to certifie his doings therein into the Chancery.

§. 12.  
The Statute of Northampton.

And for that the Juftice of Peace to whom this Writ fhall be delivered is herein but a Minifter, and is to certifie that which he fhall do therein, I will here fet down the manner how he fhall proceed to execute this Writ.

First, When the Juftice of Peace fhall come to the place where the Force is fupposed, by this Writ, he may caufe Three Oyes for filence to be made, and then he may make Proclamation in the Kings name to this effect.

Lam. 173.

*The Kings Majesties Juftice of Peace freightly chargeth, and in his Majesties Name commandeth, all and every person to keep filence, whileft his Majesties Writ, &c. be read, and Proclamation be thereupon made accordingly.*

2. Then may he read, or caufe to be read, the Writ, or may declare the effect thereof.

3. Then let Three other Oyes be made; and thereupon make Proclamation again, as followeth:

Fitz. 249.

*His Majesties said Juftice doth in His Highness Name, and by virtue of His Majesties Writ, freightly charge and command, That no manner of person, of what estate, degree or condition soever, now being within the house of B. &c. (named in the said Writ) shall go armed, or keep force of Armour or Weapon, nor do any thing there, or elsewhere, in disturbance of His Majesties Peace, or in offence of the Statute made at Northampton in the Second year of King Ed. 3. upon pain of losing his said Armour and Weapons, and of imprisoning his body at his Majesties pleasure.*

God Save the King.

4. Then the Juftice of Peace may enter and fearch whether there be any force of Armour or Weapon worn or born, againft this Proclamation: otherwise he may enquire thereof by a Jury, (for fo the Writ it felf doth warrant him.) And if after Proclamation any fuch Offenders be found, he ought to imprison the Offenders, and to feize to the Kings use, and prize (by the Oaths of fome present) the Armour and Weapons fo found with them; and the Offenders fo imprisoned are to remain in priſon untill that fome other Commandment be given concerning them from His Majesty, or his Juftices. See the Writ, Fitz. 249. and the Title, *Bailment poſtea.*

But if, upon the Proclamation made, they do depart in peaceable manner, then hath the Juftice no Warrant by the Writ to commit them to priſon, nor to take away their Armour.

Crom. 74.  
152.

But when the Juftice hath removed the Force, (upon this Writ) he may not put the party that was put out, in poſſeſſion again; for if he do, it ſeemeth both the Juftice and the party alſo are puniſhable: for the Writ doth authorize the Juftice only to remove the Force, and not to make Reſtitution.

The form of this Writ upon the Statute of Northampton, you may ſee in Fitz. N. B. 249.

The



The form of a Certificate, or Return into the *Chancery* of this Writ) see in the other Title, *Forcible Entry*.

§. 13.  
without  
writ.

Also every Justice of Peace (*ex Officio*, and without any Writ) may do execution of this Statute of *Northampton*, and that as well by force of the Commission, as of the said Statute. 2 Ed. 3. 3.  
P. Armori

The manner to execute this Statute by the Justice of Peace (*ex Officio*) Lam. 176. seemeth to be all one as before, where he hath a Writ delivered him; saving that when he doth this *ex Officio*, and without Writ, he needeth not to make any Proclamation, nor to send any Certificate into the *Chancery*: but the Justice may go to the place where the Force is, and (if it be in an house) he may enter, and search, if any Force of Armour or Weapon be worn or born against this Statute; and if any such Offenders be found, he may commit them to Prison, and may seize and prize the Armour and Weapon so found with them. And he ought to record all that which he shall do in this behalf, and thereout to send some Estreat into the Exchequer, that the King may be answered of the Armour, or of the value thereof.

But here again the Justice must not make any Restitution of the possession to the party ousted, but must only remove the Force.

And concerning the Offenders so found, and committed by the said Justice of Peace, it seemeth the Justice (at his discretion) may fine them, and upon payment thereof, or upon Sureties found for the same, that the said Justice may deliver the Offenders, even as in the former Statutes of 15 R. 2. & 8 H. 6. Or else the said Justice may record such Force, and commit the Offenders, and after certifie the record into the Kings Bench, or to the Justices of Gaol-delivery, or to the General Sessions of the Peace, as here in this Title a little before. Cro. 160.  
Lam. 176.  
516.

#### Forestaller, Regrater, Ingrosser. CHAP. XLV.

§. 1.  
Butter.  
Cheese.

“NO person shall buy to sell again any Butter or Cheese, unless he sell the same in open Shop, Fair or Market; and not in gross upon pain of forfeiture of the double value, to be recovered in any of the Kings Courts of Record, one moiety to the King, the other to the Informer. 3 & 4 E.  
6. c. 21.

“The word of Retail shall be expounded, where a Weigh of Cheese or Barrel of Butter, or less, and not above shall be sold at any time without covin. 3 & 4 E.  
6. c. 21.

“The Statute shall not extend to Innkeepers or Victuallers, where the same is spent in their houses. Ibid.

Forestaller.

“1. If any person shall buy any Merchandize, Victuals, or other thing whatsoever coming by Land or Water to a Market or Fair to be sold, or coming towards any City, Port, Haven, Creek, or Rode of England from beyond Sea, to be sold, or make promise, or contract for the same; before the same shall be in Market, Fair, City, &c. to be sold, or shall make any price, or dearer selling of any such things, or dissuade, move or stir any person not to come thither, shall be accounted a Forestaller. 5 E. 6.  
c. 14.

§. 2.  
Regrater.

“2. Any person that doth regrate, or get into his hands in any Fair or Market any Corn, Wine, Fish, Butter, Cheese, Candles, Tallow, Sheep, Lambs, Calves, Swine, Pigs, Geese, Capons, Hens, Chickens, Pidgeons, Conies, or other dead Victuals whatsoever brought thither to be sold; and shall sell the same again in the same Fair or Market, or any other within Fo urmiles thereof, shall be taken for an Ingrosser. 5 E. 6.  
c. 14.

“3. Any

- § E. 6. c. 14. " 3. Any person that shall get into his hands by Buying, or Promise- §. 3.  
" taking other then by Demise, Grant, or Lease of Land; or Tith any *Ingrosser.*  
" Corn growing in the Fields, or any other Corn, Grain, Butter, Cheese,  
" Fish, or other dead Victuals, with intent to sell the same again, shall be  
" taken an unlawful Ingrosser.
- § E. 6. c. 14. " 4. Any person thereof convicted by Law of the Realm, or in form §. 4.  
" prescribed by that Act; shall for the first Offence suffer Imprisonment for *Penalty.*  
" Two moneths without Bail, and shall forfeit the value of the Goods so *1. Offence.*  
" bought.
- § E. 6. c. 14. " 5. For the second Offence, being thereof Essoons attainted, shall *2. Offence.*  
" suffer Imprisonment by half a year, without Bail, and shall lose double  
" the value of the Goods so bought.
- § E. 6. c. 14. " 6. And for the third Offence, shall be set on the Pillory where he In- *3. Offence.*  
" habits; and forfeit all his Goods and Chattels, and be committed to  
" Prison, there to remain during the Kings pleasure.
- § E. 6. c. 14. " 7. First, Buying Barley or Oats, to be made into Mault or Oatmeal §. 5.  
" (not by Forestalling, or Secondly, Buying (not by Forestalling) by *Exception.*  
" Fishmongers, Butchers, or Poulterers things, belonging to their Trades,  
" being sold again by Retail at reasonable prices. Thirdly, Taking Corn,  
" Cattle, Butter, Cheese, upon reservation in Lease. Fourthly, Inholders,  
" buying Wine, or Victuals, and selling them by Retail in their Houses, or  
" to their Neighbours for sustenance at reasonable prices. Fifthly, Buying  
" of dryed Fish, &c. not forestalled and sold at reasonable prices. Sixthly,  
" A Badger, Lader, Kidder, or Carrier, being licenced by Three Justices  
" where he dwells, buying Corn, Fish, Butter or Cheese, he selling the same  
" within one moneth in Fair or Market, or to a Victualler, or other person  
" for Provision for his House; the same being bought without forestalling.  
" Seventhly, Provision for a City, Town-Corporate, or Victualling for  
" Ships, Castles, Forts, without forestalling, shall not be adjudged offen-  
" ces.
- § E. 6. c. 14. " 8. A man buying Corn for change of Seed, and not bringing so much  
" to the Market, shall forfeit the double value thereof.
- § E. 6. c. 14. " 9. The Justices of Peace at Sessions, shall inquire, hear and determine §. 6.  
" these Offences by Inquisition, Bill, Presentment, or Information before *who may*  
" them exhibited, and by examination of Two lawful Witnesses, or by any *inquire.*  
" other wayes or means in their discretion, and to make Procefs, as if they  
" were Indicted by Inquisition or Verdict, and upon Conviction by Infor-  
" mation or Suit at any others Protection to make Estreats of the Kings  
" part, as in other cases, and to award Execution for the Plaintiff, or Infor-  
" mer by *feri facias*, or *capias*, as the Kings Justices may do, and if the Con-  
" viction be for the King, then the whole Forfeiture to be Estreated.
- § E. 6. c. 14. " 10. Forestalling of Corn, *vide* Corn.
- § E. 6. c. 14. " 11. No person shall be Impeached on this Act, if not sued within Two §. 7.  
" years after the Offence. *Prosecution*
- § E. 6. c. 14. " 12. Any person living within a mile of the Sea, may buy Fish fresh, or  
" salted, selling the same again at reasonable prices.
- § E. 6. c. 14. " 13. Forestalling Cattle, *vide* Cattle.
- § E. 6. c. 14. " 14. The Statute of § E. 6. 12. shall not extend to Wines, Oils, Sugar,  
" Spices, Currants, nor other Foreign Victuals brought into England from  
" beyond the Seas, Fish and Salt only excepted.
- 21 Jac. 22. " 15. The Statutes of 3 & 4 E. 6. 21 & 5 & 6 E. 6. 14. shall not extend to §. 8.  
" Freemen of London buying Butter and Cheese, and selling the same again *London.*  
" in London Liberties, Southwark and Westminster.
- 21 Jac. 22. " 16. If Justices of Peace shall declare in their open Sessions the Tra-  
" ders

"ders in Butter and Cheefe shall forbear to buy ; if they shall not forbear  
 "during such restraint , they shall not be exempted from the penalties of  
 "those Laws.

§. 9.  
 Licences.

" 17. No Drover, Badger, Lader, Kidder, Carrier, Buyer or Transpor- 5 El. 12.  
 "ter of Corn or Grain, Butter and Cheefe, shall be allowed but in the  
 "open and general Quarter-Sessions of the Peace, of the County where  
 "the party dwells and dwelt Three years together before the Teste of his  
 "Licence, and none but such as are or have been Married, and such as are  
 "at the time of their Licence Houholders, and not Servants or Retainers,  
 "and of the age of Thirty years at least , and shall be Licenced only for  
 "one year.

" 18. Note, a Woman can have no such Licence, for the Statute speaks Crom. 71.  
 "only of a Man, and he that hath such Licence shall not sell by his Ser-  
 "vant.

" 19. The Licences shall bear date the day and place of the Sessions, 5 El. 12.  
 "and shall be Signed and Sealed with the proper hand and seal of Three  
 "Justices then present *Quorum unus*, upon pain that he that takes a Licence  
 "contrary to that Statute, shall forfeit 5 l. to the King.

" 20. The Justices in Sessions shall take Bond and Surety by their dis- 5 El. 12.  
 "cretion ; that the persons Licensed do not Forestall, Ingrosse, or do any  
 "thing contrary to 5 E. 6. 14. The Clerk or his Deputy, and none other  
 "shall write them , for which Licence he shall pay 12 d. at most, for the  
 "Recognizance 4 d. at most ; for which Fee the Clerk shall keep a  
 "Register of the names, &c. and bring it to the Sessions.

" 21. No person shall by Authority of such Licence buy Corn or Grain 5 El. 12.  
 "out of open Fair or Market, unless he be thereunto Licensed, and that  
 "by special words in his License so to do, or forfeit 5 l.

§. 10.  
 Hear and  
 Determine.

" 22. The Justices of Peace in their Quarter Sessions shall hear and de- 5 El. 12.  
 "termine the Offences against that Act, by Inquisition, Presentment, Bill or  
 "Information, before them exhibited ; and by Examination of two Wit-  
 "nesses, or by other lawful means by their discretion, and may make Pro-  
 "cess, as if they were Indicted. And upon Conviction, by Information of  
 "any other then the King, they may extract the Kings moiety as in other  
 "Cases, and to make Execution for the other moiety for the Informer by  
 "*Fieri facias* or *Capias*, as in the Courts at *Westminster* ; and if the Con-  
 "viction be at the Kings suit only, he shall have the whole Forfeitures.

" 23. That Act shall not prejudice Corporations in their Purveyance, 5 El. 12.  
 "nor extend to the Counties of *Westmerland*, *Cumberland*, *Lancaster*, *Chester*,  
 "nor *Tork*.

" 24. No person shall regrate or ingross any Oaken Bark, before it be 1 Jac. 22.  
 "stripped or after, to the intent to sell the same again, upon pain to forfeit  
 "the Bark.

" 25. No person shall forestall any Hide coming to a Fair or Market, or 1 Jac. 22.  
 "buy any Hide but in a Fair or Market, except of the owner who killed  
 "the Beast to be spent in his own House, upon pain to forfeit for every  
 "Hide 6 s. 8 d.

" *Forest*, vide tit. *Hunting*, vide tit. *Felony and Counterfeiting*.



## Games. CHAP. XLVI. V. 23.

1 Carol. 1.

**T**Here shall be no meeting of people out of their own Parishes on the Lords day ( or Sunday ) for any Sport or Pastimes whatsoever; §. 1.  
Sunday.  
nor any Bear-baiting, Bul-baiting, Enterludes, common Plays, or other unlawful Exercises or Pastimes, used by any within their own Parishes: upon pain that every person offending in any the premises do forfeit for every Offence Three shillings four pence, to be employed to the use of the Poor of the same Parish where the Offence shall be committed: And any one Justice of Peace of the County (or the chief Officer of any City, Borough, or Town Corporate) upon his or their view, or Confession of the party, or proof of any one Witness by Oath, shall give Warrant under his Hand and Seal to the Constables or Church-wardens of the Parish where the Offence shall be committed, to levy the said penalty by Distress, and Sale of the Offenders goods, (rendring them the Overplus:) and in default of Distress, the Offenders to be set in the Stocks by the space of Three hours. Provided that none be impeached by this Act, except he be called in question within one moneth next after the said Offence committed. *1. Caroli Regis, cap. 1. & 3 Caroli, cap. 4.*

King James of happy memory Anno Domini 1618. publickly declared to his Subjects, these Recreations or Exercises hereunder mentioned to be lawful; that is to say, Dancing of Men or Women, Archery, Leaping, Vaulting, May-games, Whitsun-Ales, Moris-dances, and setting up May-poles, and other Sports therewith used: And commanded that no such honest Mirth or Recreation should be forbidden to his Subjects upon the Sunday or Holi-days, after Divine Service (sc. Evening Prayer) ended. Restraining and barring notwithstanding from this liberty all Recusants, and all such as absent themselves from Church upon those days: Commanding each Parish by it self to use these Recreations, and only after Evening Prayer ended: And prohibiting all unlawful Games to be used upon Sunday, Bear-baiting, Bull-baiting, Enterludes, and Bowling by the meaner sort.

All which our late gracious Sovereign King Charles the First, by publick Declaration, Anno Domini 1633. hath confirmed; allowing farther the Feasts of the Dedication of Churches, commonly called wakes, and all manlike exercises to be there used with all freedome, yet so as none bring any Weapons thither: Commanding all Justices of Peace to look that no disorders be at such wakes, but to be prevented or punished, &c.

The Statute of 12 R. 2. c. 6. Directs Servants and Labourers in Husbandry, Artifices and Victuallers to use shooting upon Sundays and Holi-days, and prohibits them to play at Tennis, Footbal, Coites, Dice, and other Games; and the Statute of 11 H. 4. c. 4. confirms it with the penalty of Imprisonment Six days upon the Offender; and thereby it is Enacted, that no Apprentice or Servant shall play at Tables, unless it be for meat or drink, nor at Tennis, Dice, Cards, Bowls, or any other unlawful Game out of Christmas, and in Christmas, to play only in their Masters Houses or presence, upon pain of Imprisonment in the Stocks for a day, and the Householder that suffers these Games to be used in other manner upon conviction before the Justice of Peace, &c. forfeited 6s. 8d.

But the Statute of 12 R. 2. c. 6. is repealed by 21 Jac. c. 28. and by the

“ Statute of 33 H. 8. c. 9. all Statutes for the restraints of unlawful Games, as touching the penalties and forfeitures of the same are repealed; so that now the Statute of 33 H. 8. c. 9. as to any penalties is in force, and such Games as be prohibited by 11 H. 4. c. 4. & 33 H. 8. c. 9. or unlawful, viz. Tables, Tennis, Football, Coites, Dice, Bowls, Cloysh cales, half Bowls, Cards, Logats; so that the Offences relating to Games are upon these accompts: First, Games are by those Statutes said to be unlawful in respect of the condition of the persons playing, such are Servants and Labourers in Husbandry, &c. by 12 R. 2. c. 6. 11 H. 4. c. 4. & 33 H. 8. c. 9. Secondly, Persons keeping Houses or Places for those Games for lucre, gain or living. Thirdly, Persons haunting such Houses for those Games sake, out of which cases Gaming is lawful, and not only the Games before mentioned, are in cases and circumstances aforesaid unlawful; but any new Game to be invented, if used by persons of the mean Condition aforesaid, or used and kept by persons for Game, Lucre and Living are unlawful by 33 H. 8. c. 9. that is, as to some persons using them, and the places where used as being to such persons, and in such places means of Idleness, Debauchery, and other grievous mischiefs.

“ The punishment of Players at Dice, &c. by the civil Law, besides infamy, avoiding of the contract and security for any Money so won, and restitution of the thing so obtained, was, and is arbitrary. See *Althusius Dicaologie. p. 417. l. 26.*

§. 2.  
Search.

Every Justice of Peace may from time to time (as well within Liberties, as without) enter into any common House or Place where any playing at Dice, Tables, Cards, Bowls, Coyts, Cales, Logats, Shove-groat, Tennis, Casting the Stone \*Foot-ball, or other unlawful Game, now invented, or hereafter to be invented, shall be suspected to be used; and may arrest the keepers of such places, and imprison them till they find Sureties by Recognizance no longer to occupy any such House, Play, Game, Alley, or place.

33 H. 8. c. 9.  
P. Just. 64.  
Plays 5.  
\* 12 R. 2. c. 6.  
Lam. 196.

§. 3.  
Places.

“ Yet it was resolved in 3 Jac. That if the Guests in any Inn or Taverns call for a pair of Dice or Tables, and for their Recreations play with them, or if any Neighbours play at Bowls for their Recreations, or the like, that these are not within the Statute of 33 H. 8. c. 9. for the Statute consists of Two parts. 1. That no person shall for his or their Gain, &c. So that although these Games are used in any Inns, Taverns, or other Houses, if the House be not kept for Gaming, for Lucre or Gain, but they play only for Recreation, and for no Gain to the owner of the House, this is not within the Statute, nor is such person that playes in such House that is not kept for Lucre or Gain, within the penalty of that Law.

Also he may arrest and imprison (without Bail) the Players till they be bound by themselves; or with Sureties, by Recognizance to the Kings use, no more to play at, or to haunt any of the said places or Games. *Ibid.*

The said Statute of 33 H. 8. prohibited all manner of persons to play at any unlawful Game in any common House, Alley, or place; except the keeper of such House or place have a Placard, containing what Games shall there be used, as also what persons shall play thereat: and then such persons may play there, &c.

Also the said Statute prohibiteth all Artificers, Husbandmen, Labourers, Mariners, Fishermen and Watermen, and all Apprentices and Servants, whatsoever, to play at any unlawful Game, in any place or at any time, except in Christmas-time only and in their Houses, or Servants in their

Masters

Masters houses, and by their Masters License; or Serving-men within the Precinct of their Masters house, Garden, or Orchard, and by their Masters License. Also no manner of person shall at any time play at Bowls in any open places, out of his Garden or Orchard. P. 4.

‘And the said Statute seemeth to make all Games almost unlawful, ‘save Shooting in the long Bow, [that being a great defence for the Realm, ‘and a meet exercise for all manner of persons to use, and a means to prevent, or divert Men from other unlawful, crafty, and deceitful Games, and ‘from the inordinate and common haunting of Alehouses and Tippling.

Every Justice of Peace finding or knowing any person to exercise or use any of the aforementioned unlawful Games (contrary to this Statute of 23 H. 8. cap. 9.) may commit him to Ward, there to remain without Bail, until he become bound (in such sum of Money as the said Justice shall think reasonable in his discretion) that he shall not from henceforth use such unlawful Games. *Ibid.*

33 H. 8.  
c. 9.

‘The Penalties for Artificers, Husband-men, Laborers, Apprentices, §. 4.  
‘Servants at Husbandry, Journeyman, or Servant of Artificers, Mariners, *Penalties*  
‘Fishermen, Watermen, or Servingmen, Playing at Tables, Tennis,  
‘Dice, Cards, Bowls, Clash, &c. out of *Christmas*, is Forty shillings, and  
‘in *Christmas* time to play in their Masters house or presence.

*Ibid.*

‘The Penalty for keeping a House of unlawful Games, is Forty shillings *per diem*.

*Ibid.*

‘The Penalty for resorting thither, or playing there, is Six shillings eight pence for every time.

*Ibid.*

‘Majors, Sheriffs, Constables, and Head-officers, &c. shall once a Moneth search places suspected, or forfeit for every Moneth Forty shillings.

*Ibid.*

‘All Majors, &c. and Head-officers, shall four times every year, Proclaim this Statute in the Market. And all Justices of Peace shall Proclaim the same in their Sessions.

31 Eliz.  
c. 5.

‘All Suits upon the Statutes of unlawful Games, shall be heard, sued, §. 5.  
‘and prosecuted, at the Assizes or Sessions of the County where the offence is committed, and not out of the County.

2 & 3 Ph.  
& Mac. 9.

‘Every License, Placard, or Grant, made to any person for having  
‘or keeping any Bowling-Alley, Dicing-Houses, or other unlawful  
‘Games, prohibited by the Laws of the Realm, shall be void.

Although these Games aforementioned, are by Statute prohibited as unlawful for some places, persons, and times; yet are they not unlawful or evil of themselves, but are matters of Recreation and Pleasure, (though some of them more vain and more idle then others:) And the King by His Prerogative may tolerate and license the moderate use of all such Games, as it shall seem good to His Majesty, *Co. 11. 85 b.* §. 6.

Note also, That Playing at Cards, Dice, and the like, are not prohibited by the Common Laws of this Realm, (except that one be deceived by false Dice, or false Cards; and then he that is deceived, may have his Action of the Case for such Deceit;) neither are they *malum in se*, or of their own natures, for then none might be tolerated or licensed to use them; whereas the Statute doth except and tolerate certain persons, places, and times. ‘And yet good \* Divines do hold divers of these Recreations to  
‘be altogether unlawful, as being actions wherein we neither bless God,  
‘nor look to receive a Blessing from God; nay, such as we dare not pray  
‘to God for a Blessing on them, nor on our selves in the use thereof: But  
‘especially on the Sabbath-day all such Recreations and Games are holden  
‘unlawful. For if lawful Works be forbidden on that day, much more  
unlawful

\* B. Baile,  
400.  
Dr. Willet,  
498.  
M. Perkins.



“unlawful Sports, (yea, such Sports and Games, which otherwise, and at other times, are lawful.) See *Isai.* 58. 13.

“For the preventing deceitful and excessive Gaming, a good Law was made 16 *Car.* 2. *cap.* 7. but the Justices have nothing to do therein.

“But inquire what Games shall be said to be unlawful, other then those aforementioned, *Quare*, of Dancings of the Morrice, or other open Dancings, “Bearbaitings, Common Plays, and Fencings. All these seem to be prohibited by the Statute of 39 *El.* 4.

Guns. CHAP. XLVII. V. 24.

§. I.  
One Ju-  
stice.

**W**Hosoever shall shoot in, carry, keep, use, or have in his house, or elsewhere, any Guns, Cross-bows, (\* Dags, Pistols, or Stone-bows, contrary to the Statute of 33 *H.* 8. 6.. every person seeing or knowing this, may arrest or attach the Offenders, and bring or convey them to the next Justice of Peace in the same County (where they were found offending;) which Justice, upon due Examination and Proof thereof, before him had or made, by his discretion, may commit the Offenders to the Gaol, there to remain until they have paid the Penalty of the Statute, *scil.* Ten pounds.

Dyer 254.  
Co. 11. 87.  
33 *H.* 8. 6.  
\* Co. 5. 72.  
P. 1, 2, 6.

The effect and particulars of which Statute be as followeth.

P. 1.  
Co. 5. 72

1. No person may Shoot in, or keep any Gun, Dag, Pistol, Cross-bow, Hagbut, Demi-hake, or Stone-bow, except he hath *per annum* 100 *l.* in Lands, Tenements, Fees, Annuities, or Offices, “in his own right, or “in the right of his Wife, or any other in trust for him, or forfeit Ten “pounds for every time.

2. No person may shoot in, carry, keep, use, or have any Hand-Gun under one whole yard in length, in the Stock and Gun, nor any other Gun (\* Dag or Pistol) that shall be under three quarters of a yard in length, “or forfeit Ten pounds for every time.

P. 2.  
\* Co. 5. 72

Every person having in Land, &c. 100 *l.* *per annum*, may seise and take from the Offender every Gun (Dag and Pistol) shorter then is before limited, and every Cross-bow (or Stone-bow) from him that hath not 100 *l.* *per annum*, and may keep such Bow; but must break such Guns within Twenty days next after such seisure, “or forfeit Forty shillings for “every Gun not broken, and may keep the Gun so broken.

§. 2. But now, by the Statute made 3 *Jac.* *cap.* 13. if any person, not having Lands, &c. of the yearly value of Forty pounds, or not worth in Goods Two hundred pounds, shall use any Gun, Bow, or Cross-bow, to kill any Deer or Coneys, or shall keep any Buck-stall, or Engine, Hays, Gate-nets, Purse-nets, Ferrets, or Coney-dogs, (except such persons shall have any Ground inclosed, used for the keeping of Deer or Coneys, &c. or be Keepers, or Warreners) any person having in Lands an hundred pounds by the year in Fee, or for life, may take from such Malefactors, and to his own use for ever keep, such Guns, Bows, Cross-bows, Buck-stalls, or Engines, Hays, Gate-nets, Purse-nets, Ferrets, and Coney-dogs.

3. No person may carry in his journey any Gun (Dag, or Pistol) charged, or Bow bent, (but only in time and service of War, or in going to or from Musters) except he hath *per annum* 100 *l.* in Lands, &c. “Or shall forfeit Ten pounds.

P. 3.  
Lam. 462

4. No person may shoot in any Gun, &c. within any City, Borough, or Market Town, nor within one quarter of a mile of any City, Borough, or

or

or Market Town, except for the defence of his Person, or House, or at a But, or Bank of Earth, and in a place convenient: "Or if he do, shall forfeit Ten pounds.

P. 4. 5. The Master may not command his Servant to shoot in any Gun of  
P. 5. Cross-bow, &c. except at a But, or Bank of Earth, or in time of War: "Or  
"if he do, shall forfeit Ten pounds.

P. 7, 8, 9. Except, notwithstanding out of this Statute, Shooting at But or Bank of Earth by Serving-men, whose Masters are inabled by Statute, and by Inhabitants of Cities, Boroughs, and Market Towns; except also, all Lords, Knights, Esquires, and Gentlemen, and the Inhabitants of every City, Borough, and Market Town; as also all persons dwelling alone, or near the Sea, and Makers and Sellers of Guns, &c. These may keep Guns, &c. of the length aforesaid, in their houses (yet only to use and shoot therein at a But, or Bank of Earth :) And persons having lawful Placards, they may shoot according to such Placard or License. See other Exceptions there.

"Any person keeping Hawks, having License from the Sessions to shoot at Crows, &c. for Hawkmeat only, may kill Hawkmeat, so  
"as he do at the same Quarter Sessions become bound by Recognizance  
"in Twenty pounds, not to shoot at any Fowl prohibited by that Law;  
"nor within Six hundred pounds paces of a Hernery or Pidgeon-house,  
"nor in any Forest, Chace, or Park, whereof His Majesty is not owner.  
"1 Jac. 27.

But forasmuch as in these former Cases, the Justice of Peace hath the whole matter committed to himself, and that such Offenders remain convict upon his Examination and Proof of Witness made before him, therefore he ought to be circumspect in his Examination, as also in his *Mittimus*. And farther, to make a Record of the Matter, (in writing under his hand) and also to send the *Esfreat* of it into the *Exchequer*, whereby the Kings duty may be levied.

"No person under the degree of a Lord of Parliament, and not having 100 *l. per annum*, shall shoot in any Hand Gun in any City or Town, at any Fowl or Mark upon any Church, House, or Dovecote; nor shall any person shoot in any place with Hailshot, upon pain to forfeit Ten pounds, and imprisonment for three Moneth. 2E Edm. 6. 14.

The Form of such *Mittimus*, vide hic postea.

The Form of the *Record*, see there also.

2 Ed. 6. 14  
P. 11.

All persons which shoot in Guns (whether they be authorised to shoot or otherwise) ought to present their names to the next Justice of Peace, and such Justice shall cause the Clerk of the Peace to Record or Register their Names. But *quere* if this be now in use. *Lambt. 296.*

1 Jac. 27.  
P. Feasants

Any two Justices of Peace may commit to the Gaol for three Moneths, &c. every such person as shall shoot with any Gun, or Bow, at any Partridge, Pheasant, House-Dove, Mallard, or such Fowl, or at any Hare. See more in the title *Partridges*. "See *Postea tit. Partridge*.

But note, That the Sheriff, or any of his Officers, for the better executing of their Office, may carry with them Hand Guns, Dags, or other Weapons, (invasive or defensive) notwithstanding the Statute of 33 H. 8. cap. 6. Co. 5. fol. 72.

33 H. 8.  
c. 6.

"All Justices of Peace in their Sessions may hear and determine these Offences, so as no less Fine then Ten pounds be assessed for any such Offence: Which Fine so assessed in Sessions, shall be to the Kings use only.

Any

"Any person seeing, finding, or perceiving any person to offend against the Act, may attach and arrest, and bring him before the next Justice of Peace, who shall upon due Examination and Proof, by his discretion, commit to him to the next Gaol, there to remain till the Penalties be paid, one moiety to the King, the other to such bringer. 33 H.8. c. 6.

"If any Jury conceal the Offence, the Justices may Impanel Twelve or more, who if they find the concealment, every one of the first Jury shall pay Twenty shillings to the King.

"Hats and Caps. See 8 El. 11. & 1 Jac. 17.

## Hawking. CHAP. XLVIII. V. 25.

§. 1. **E**Very Justice of Peace may examine the Offences for Hawking or Hunting with Spaniels in eared or coddled Corn, and may bind the Offenders with good Sureties to appear at the next General Sessions of the Peace, to answer their said Offences, 23 Eliz. 10. It seemeth requisite also, that the Justice do bind over the Witnesses which shall discover the Offence. P. Pheasants 4. P. Just. 38.

Against Hawking at Pheasants or Partridges between the first day of July, and last of August. See 7 Jac. 11. *Hic tit. Partridges.*

Hawks that be found, shall be delivered to the Sheriff. *Vide tit. Felonies by Statute.*

Hawks, where the taking or concealing them is Felony. See there also.

§. 2. "If any person shall take any Hawk, or the Eggs of them, out of the Woods or Ground of another, not having License so to do, he shall be imprisoned three Moneths, and pay the party his treble damages, and give security to be of the Good Behavior seven years, or else lie in prison Seven years. 5 Eliz. 31. See more largely at *Hunting.*

## Hearth Money and Chimney Money. CHAP. XLIX.

§. 1. **E**Very House, Edifice, Chamber, and Lodging, shall be charged with Two shillings yearly to be paid at our Lady-day, and Michaelmas, for every Fire-hearth, and Stove therein. 14 Car. 2. c. 10. The duty.

§. 2. "Every owner within six days after notice given by the Officers, shall deliver in to them an Accompt in Writing, under their hands, of all their Hearths and Stoves, 14 Car. 2. c. 10. Accompt.

"The Officers shall before the last day of May, 1662. require such Accompt; and for want of such Accompt, shall enter, and view, and deliver the same to the next Sessions, who shall cause the same to be indrolled, and make a Duplicat thereof, and return it into the Exchequer. 14 Car. 2. c. 10. View.

§. 3. "The Treasurers and Officers of Inns of Court and Chancery, Colleges and Societies, and the Constable, Headborough, Tithingmen, and other Officers, shall every half year, within six days after the duty grown due, collect the same, and give Acquittances, which shall be a full Discharge, and the party never be troubled in the Exchequer, or elsewhere. 14 Car. 2. c. 10. Collection.

"In case of neglect or refusal, the Officers may levy the same by Distress



"stres and Sale, rendring the overplus after the duty and necessary charges of levying deducted, 14 Car. 2. cap. 10.

"The Collectors shall within twenty days after it is due, pay it to the High Constables of the Hundred, taking an Acquittance without paying any thing for it, and deducting two pence in the pound, and shall deliver in writing the names from whom they have received it, and the names of such as have not paid it, where no Distres can be had. 14 Car. 2. cap. 10. §. 4. Payment.

"The High Constables shall within ten days after Receipt of it, pay it to the Sheriff, and deliver him the returns, deducting a penny in the pound for their pains. 14 Car. 2. cap. 10. Fus.

"The Sheriff shall within thirty days pay it into the Exchequer, with the return, deducting four pence out of twenty shillings, viz. Three pence for himself, and one penny for the Clerk of the Peace. 14 Car. 2. cap. 10.

"The Sheriffs of London and Middlesex, for so much as is within the Weekly Bills, and the Sheriff of Surrey for Southwark, are appointed Collectors; and so are Sheriffs of all Towns, being Counties of themselves; and the Constables, &c. are to deliver them Duplicats, and they to Inrol them at Sessions. 14 Car. 2. cap. 10. §. 5. London.

"Where any increase and decrease of Hearths or Stoves is, an Account shall be taken, returned, inrolled, as before is directed, and a Duplicate sent into the Exchequer; and where any decrease is, the party to be thereby discharged without further pleading. §. 6. Increase.

"No person shall be presented for his duty, unless Suit be brought within two years, and brought to Judgment within four years, and levied within five years. 14 Car. 2. cap. 10. §. 7. Prosecution.

"No person, who by reason of poverty, is exempted from payment to Church and Poor, shall be charged with these duties. See sect. 18. §. 8. Poor.

"If the Church Wardens and Overseers, with the Minister (Quorum the Minister) shall under their hands, certify a House to be under Twenty shillings per annum; And that the party useth not other Lands above Twenty shillings per annum; nor hath Lands or Goods to Ten pounds value, upon such Certificate made to the two next Justices of Peace, and allowed, the party shall be discharged. 14 Car. 2. cap. 10. Exemption.

"The Act not to extend to a Blowing-house, or Stamp, Furnace, Kiln, or private Oven; nor an Hospital or Alms-house, the Revenue whereof exceeds not One hundred pounds per annum. 14 Car. 2. cap. 10. §. 9. Exception.

"The Occupier or Tenant, his Executors or Administrators to be charged, and not the Landlord. Ibidem. Charge.

"By the Statute of 15 Car. 2. cap. 13. a new Survey is appointed after Michaelmas following, and several Penalties inflicted upon Householders and Officers, for their neglect or concealment. §. 10. Survey.

"He that is Officer at the time of the duty grown due, may collect, distrain for, and receive the same, notwithstanding he be afterwards changed or moved. 15 Car. 2. cap. 13. §. 11. Collection.

"If any person, who by that or the former Act, ought to collect, distrain for, or receive the duty, shall refuse or neglect to do his duty, for every week he shall so neglect or refuse, he shall forfeit Twenty shillings. Neglect.

"Where the Officers may enter the House or Distrain, he may call to his assistance two sufficient Inhabitants, who are required to assist him. 15 Car. 2. cap. 13. Assistance.

"Where

- Sheriff. "Where a Sheriff is appointed to be Collector, he may appoint his Deputy under his Hand and Seal. 15 Car. 2. cap. 13.
- §. 12. Officers in Societies, may do such things, and are liable to such Penalties, as other Officers are. 15 Car. 2. cap. 13.
- Westminster. "The Bailiffs of *Westminster* and *Southwark* may do the same things, and are liable to the same Penalties as Sheriffs. 15 Car. 2. cap. 13.
- Allowance. "The Lord Treasurer or Chancellor of the *Exchequer*, may make such further allowance to the Clerk of the Peace, as they shall think fit, not exceeding one penny in the pound. 15 Car. 2. c. 13.
- §. 13. By Act of 16 Car. 2. c. 3. the Kings Majesty, His Heirs and Successors may by the Advice of the Lord High Treasurer, Chancellor, Under-Treasurer, and Barons of the *Exchequer*, or any three of them (*Quorum unus*, the Lord High Treasurer or Chancellor) to appoint such persons as His Majesty, &c. shall think fit to collect the duty for viewing Hearths and Stoves, and for examining the Rolls, Returns, and Certificates, who are enabled to supervise the Rolls and Returns; and being attended with the Officer of the place, if any; or else without any in the day time, to view and search, if any more Fire-Hearths or Stoves be, then are returned; and so once every year: And if they find any variance, such person appointed, and Parish Officer, are to certify the same to the Clerk of the Peace; and after approbation thereof, by the Justices in Sessions, the same is to be certified to His Majesties Remembrancer in the *Exchequer*: And such person or persons, so to be appointed, may collect the same, and other Officers appointed by former Acts, are discharged of Collecting thereof; and such persons to be appointed, shall pay to the Petty-Constables, and Clerk of the Peace, such allowances as are given by former Acts. 16 Car. 2. cap. 3.
- Fees. "All Justices of the Peace, Chief Magistrates, Constables, and other Officers, are to be assisting to such persons as shall be so appointed, according to the true meaning of that and other Acts. 16 Car. 2. c. 3.
- §. 14. In case of demand made at the place where the duty grows due, and refusal or non-payment within an hour after demand, the Officer appointed may Distrain, with the assistance of the Parish Officer in the day time, and levy Duty, Arrears, and Charges of Distress; the Charges not exceeding the moiety of such Duty and Arrears, rendering the overplus. 16 Car. 2. c. 3.
- §. 15. In case of violent Oppression or Injury done to such person appointed, or his Deputy, and the same proved upon Oath, before any one Justice of Peace, dwelling near the place, or chief Magistrate or Magistrates of the City, Town, or place, they may punish such Offenders by Imprisonment in the Common Gaol (for any time) not exceeding one Month. 16 Car. 2. c. 3.
- §. 16. No person shall be so employed, unless he give security to the King, to answer the duty, and take an Oath before one or more of the Barons or Commissioners to that purpose, to execute that Office according to the Law. And shall take no Fee of the Subject, but of the King, upon pain to be disabled to execute the said Office; and upon legal Conviction, to render treble to the party grieved, and shall sign and deliver Acquittances to the parties which shall be a good discharge. 16 Car. 2. cap. 3.
- §. 17. If any using such Hearth or Stove, leave the house or place before the half years Feast, the next occupier shall be chargeable for that half year. 16 Car. 2. c. 3.

"If

"If any person shall fraudently stop up, deface, cover, or conceal  
 "any Hearth or Stove chargeable, and the same be proved by confession  
 "of the party, or upon Oath, before one Justice of Peace; or chief Ma-  
 "gistrate, or by their view; he shall forfeit the double of the duty to be  
 "levied as aforesaid. 16 Car. 2. c. 3. Fraud.

"If any shall let the Lands, Gardens, Orchards, or Out-houses, for-  
 "merly belonging to a Dwelling house or Cottage, apart from the same,  
 "or shall divide any House into several Dwellings, or Let the same to any  
 "such persons, who by reason of poverty may pretend to be exempted.  
 "Then such persons shall pay the Duty as they ought to have done before  
 "that time. 16 Car. 2. c. 3.

"No person inhabiting in a House (not being an Alms-house, ex- §. 18.  
 "empted by the former Act) in any City, Borough, Corporation, Market Exemption.  
 "Town, or Parish, which hath or shall have more then two Chimneys,  
 "Fire-Hearths, or Stoves, shall be exempted. 16 Car. 2. cap. 9. before  
 "sect. 6.

"If any Question arise, touching the levying of any Money by ver- §. 19.  
 "tue of that Act, the same shall be heard and finally determined, by one Decision.  
 "or more Justices of Peace, next adjoining, or Chief Magistrate of the  
 "place, respectively upon Complaint. 16 Car. 2. c. 3.

"Many Questions have arisen upon these Acts, as,

"1. Whether in case of new built Houses, or other Houses, not for- §. 20.  
 "merly surveyed and returned, the Duty may be required and levied Quæst.  
 "before any Survey and Return made.

"2. Whether Houses new built, standing empty, and untenanted,  
 "ought to answer the Duty.

"3. Whether the King for this Duty, may Distrain upon any other  
 "Estate of the party that is his Debtor, as he may do at Common Law.

"4. Whether the Duty ought to be paid for Smiths Forges.

"These, and divers other *Quæres* touching the Execution of these  
 "Acts, have arisen; and there being special Verdicts found in Actions  
 "now depending in His Majesties Courts, wherein the Cases are made for  
 "their Resolution, we may hope for a speedy Decision of them.

"One thing since the Statute of 16 Car. 2. c. 3 concerns Justices of  
 "Peace to see to, That such persons as come to receive the Duties, bring  
 "with them sufficient Authorities and Deputations for the same; for  
 "otherwise the Countrey may be gulled of their Money, and may pay, and  
 "yet not be discharged against the King.

# High-ways. CHAP. L. V. 26.

"*Maxima priscis temporibus Senatus diligentia fuit faciendis sar-* §. 1.  
 "ciendisq; viis tam intra quam extra urbem, saith *Rossius*,  
 "Antiq. Rom. l. 7. p. 300. And the care of them was first committed to  
 "the Censors; but they having other employment, they chose others  
 "whom they called *Quatuor-viros viarum curandarum*, but the number  
 "of their Ways increasing, particular Ways had particular Citizens ap-  
 "pointed, who were called *Curatores viarum*, which *Cæsar Augustus* made  
 "an ordinary Office. See *Enndem*, p. 301. to which our Surveyors now  
 "exactly answer.



§. 2.  
Definition.

*VIA*, a Way, is defined to be, *Transitus a loco in locum*.

Note, That there are three kinds of Ways, *scil.*

§. 3.  
Kinds.

1. A Foot-way called *Iter*, *quod est jus eundi vel ambulandi hominis*.

2. A Foot-way and Horse-way called *Actus*, *ab agendo*; and this vulgarly is called a Pack or Drift-way, and is both a Foot-way and Horse-way.

3. The third, a Cart-way, &c. called *Via* or *Aditus*, (and containeth the other two, and also a Cart-way,) for this is *Jus eundi, vehendi, & Vehiculum & Jumentum ducendi*: And this is twofold,

*Via Regia*, the Kings High-way for all Men: 'With this only,

*Viz.* 'The Justices of Peace here are to meddle.

*Communis Strata*; belonging to a City or Town, or between Neighbors.

'*Mish.* out of *Ulpian* maketh also three kinds of Ways, *Publicam*, '*Privatam*, & *Vicinalem*.

'*Via Publica*, *quam Latini Regiam appellant*.

'*Vicinalis*, *que in vicis est, vel que in vicos ducit*: Ways between 'Street and Street, Neighbor and Neighbor, and House and House in 'Cities and Towns.

'*Privata est, quam agrariam dicunt*: And these are of two sorts.

'*Vel ea que ad agros ducit, per quam omnibus commovere licet*,

'*Vel ea que est in agris, cui imposita est servitus, ita ut ad agrum alterius ducat*.

§. 4.  
One Just.  
Enlarged.

woods.

Every Justice of Peace may cause the High-ways to Markets 'where 13 E. 1.  
'any Woods, Bushes, or Ditches be', to be enlarged and cleansed of Bush- See postea  
es and Trees, (so that there be neither Bush, Ditch, or Tree, within Two rit. Robb  
hundred Foot of either side of the Way. The Statute 13 E. 1. excepteth ry.  
Ashes and great Trees; but by the Statute 5 E. 1. all Trees and Bushes there-  
in, are to be cut down, &c. And this the Justice of Peace may do by force  
of the Commission, the first *Affirmavit*, (*Damb. 190.*) But how the  
Justice shall compel the same to be done, I see not, otherwise then by ad-  
monition; and if that be not obeyed, then to present it, or cause it to  
be presented at the Quarter Sessions, &c. *Vide tit. Commission of the  
Peace.*

Also by the Articles of Inquisition upon the Statute of *Winchester*,  
(made about 34 E. 1.) it is appointed, That if the High-ways be not  
enlarged accordingly, inquiry shall be made where the ways be,  
who ought to enlarge them, and of such as do hinder such enlarge-  
ments, as well in Parks as in other Woods. See *Poultons Statutes* at  
large, fol. 93.

§. 5.  
What it is.

"The High-way is not only the Common Tract, where Carts, Carri-  
"ages, and People have gone; but if the way be Foundrous, that Peo-  
"ple cannot pass in the Common Tract, and there be Outlets, out of it,  
"into the Soil of another adjoining, the People may in such extremity  
"use those Outlets upon another's Soil, although it be sown with Corn:  
"And that is, in such case, the Kings High-way as well as the other; for  
"the Kings Subjects must have a convenient Passage, as was resolved in a  
"Tryal at Bar against Sir Henry Duncumb, T. 10 Car. *Rolls 1 part, of A*  
"*bridgeway, fol. 390.* Therefore where a Way goes through a Man's Land,  
"and the owner of the Land Fence it on both sides, he by so doing, hath  
"made himself liable to repair the High-way, and keep it passable; and it  
"is not sufficient for him to keep it in as good repair, as it was at the  
"time of the Inclosure; for by so doing he hath straitened the High-  
"way.

Every

5 Eliz. 13. P. Just. 69. Crom. 131 Every Justice of Peace (upon his own knowledge) may present in §. 6. open General Sessions any High-way not sufficiently repaired and amended; Prefect- me. i. within the County and limits of his Commission.

Every Justice of Peace (upon his own knowledge) may present in open General Sessions, any other Default or Offence committed (within the County and Limits of his Commission) contrary to the Statutes of 5 Eliz. 13. 2 & 3 P. & M. 8. & 5 Eliz. cap. 13. concerning the Amendment of High-ways; and every such Presentment shall be of the Force of a Presentment of Twelve Men, (scil. shall be a good Indictment against the Offenders.) So that upon such Presentment the Justices at the said Sessions may Assess the Fine upon such Offenders, and that in the absence of the party, and without calling them to it by any Process (saving to every Offender their lawful Traverse.) *Ibidem.*

2 & 3 P. & M. c. 8. 5 Eliz. 13. 29 Eliz. 5. So that every Justice of Peace may present, as aforesaid, all and every these Defaults following, being all contrary to the said Statutes, &c.

P. i. 1. IF the Constables and Church-wardens of every Parish yearly upon §. 7. the Tuesday or Wednesday in *Easter* week, do not call together the Surveyors, Parishioners, and do not then also chuse Surveyors, for the amending of High-ways in their Parish leading to Market Towns, according to the Statute, 2 & 3 P. & M. 8.

"The Statute of 14 Car. 2. c. 6. saith, That the Church-wardens and Constables, or Tithingmen of every Parish, Town, Village, or Hamlet, for the time being, shall, &c. Which words are more suitable to the nature of the service, in respect of the persons, by whom Execution shall be. But this Statute, as to this, seems to be repealed by the Statute of 22 Car. 2. For thereby it is said, that the Surveyors, &c. shall be chosen, and nominated by such persons, as by an Act made in the Second and third years of King Philip and Queen Mary, is appointed upon some day in the same week, that the Feast of the Birth of our Lord, commonly called *Christmas* shall be.

P. 2. 2 P. & M. 2. If six days be not by the Constables and Church-wardens then also appointed for that purpose, and to be before *Midsummer* following. 2 P. & M. & 5 Eliz.

"This Clause seems to be repealed by the Statutes of 14 Car. 2. c. 6. & 22 Car. 2. for thereby the appointing the days of working, is enjoyned to the Surveyors; yet by the Statute of 22 Car. 2. the Execution of all Statutes made for the Repair of the High-ways, is enjoyned to the Constable also; but it seems that must be taken distributive, viz. that the Constables must do what they are required and authorised by former Statutes, and in like manner the Surveyors.

3. If notice of the said days be not given the Sunday after *Easter* openly in the Church, by the Constables and Church-wardens.

P. 4. 4. If every person having in his occupation a Plough-land in Tillage or Pasture in the same Parish, or keeping there a Plough, or a Draught, do not send at every day and place appointed, &c. for every Draught or Plough-land, in Tillage or Pasture, one Cart furnished with necessary Tools, and two able Men with the same; and that they do such works as they shall be appointed (by the Surveyors) by the space of eight hours, every of the said six days. §. 8. workers.

But by the Statute 18 Eliz. 10. he that shall occupy a Plough-land in Tillage or Pasture, lying in several Parishes, shall be chargeable only in the Parish where he dwelleth; and he that occupieth several Plough lands

as aforesaid, in several Parishes, shall be charged, in each Town or Parish where such Land lieth, *scil.* To find in each Town or Parish one Cart furnished, as aforesaid.

"In places where there is no use of Carts and Teams, but the usage is to carry Materials on Horses backs, or by other kind of Carriages, then the Inhabitants using such kind of Horses or Carriages, shall send in the same with able persons, to work under such Directions, Forfeitures, and Penalties, as by former Statutes is appointed for Carts and Teams. 22 Car. 2.

5. If any of the Carriages shall not be thought needful by the Surveyors upon any the said days, if then every such person shall not send two able Men for every Cart of theirs so spared. 2 & 3 P. & M. P. 13, 14  
P. 34

6. If every other Housholder, Cottager, or Laborer, (able to labor, and being no hired Servant by the year) do not by himself, or one sufficient Laborer, work every of the said six days by the space of eight hours, as they shall be appointed by the Surveyors. 2 & 3 P. & M. P. 4

A Cottage one describeth to be, *Casarnistica ex leviori materia excitata, arundine aut ulva palustri tecta.* Minsh.

And he is a Cottager that dwelleth in such Cottage or House, without land belonging to it. 4 E. 1. Stat. 1.

7. Note, that all persons being chargeable but as Cottagers, yet if they be in the Subsidy Five pounds in Goods, or Forty shillings in Lands, or above; they shall find two able Men to work every of the six days by the Stat. 18 El. c. 10. But it seemeth the Justice cannot present such Default upon his own knowledge. P. 11.  
18 El. 10

§. 9. P. 7.  
*Hedges and Ditches.* 8. If all Fences, Hedges, and Ditches, next adjoyning on either side any High-way, be not from time to time Diked, Scoured, Repaired, and kept low by the owners of the Ground. 5 El. & 18 El. c. 10.

9. If all Trees and Bushes growing in the High-ways, be not cut down by the owners. 5 El. 18 El. c. 10.

'And now it seemeth, that if (according to these last mentioned Statutes of 5 El. & 13 & 18 El. cap. 9.) all the Hedges and Fences be kept low, the Trees and Bushes cut down, and the Ditches scoured and repaired, it sufficeth, though the Ways be not Two hundred foot wide on each side.

§. 10. Rolls 1 p  
P. 392.  
*whose the Soil is.* Note, that the Kings High-way (or *Regia via*) leading either to the Market, or from Town to Town, the Freehold and Soil thereof, and the interest of all the Trees, and other such Profits thereupon growing, do belong to the Lord of the Soil, or the Lord of the Mannor. 17 E. 3. fol. 43. & 8 E. 4. fol. 9. *Br. Chemin* 10, 11. & 27 H. 6. fol. 9. *Br. Lect* 3. And therefore such Lords are chargeable to cut down the Trees and Bushes growing in such High-ways; and yet by the opinion of *Keeble*, 8 H. 7. fol. 5. the Freehold of the High-way, and the Trees thereupon growing, are belonging to him (*scil.* to any Freeholder) that hath the Land next adjoyning, *Br. Nuisance* 28. But it seemeth this must be understood of Common Field-ways, or other private ways, and not of the Kings Highway. See 2 Ed. 4. fol. 9. *Britton*, fol. 111. 2 Leon.  
148.

"Yet generally he that hath the Soil, or both sides the High-way, shall have the Trees growing on the High-way; as was held 18 El. B.R. Cited P. 11 *Jac. Rolls*, 1 part. p. 392. Yet the Lord of a Rape that hath several Hundreds in it, may prescribe to have the Trees growing in any High-way, within that Rape, for the usage, to take the Trees as a Badge of Ownership; as was Adjudged 11 *Jac. B. R.* In the Case of Sir *John Pelham*.

Note,



8 H. 7. 5.  
Br. Nu-  
fance. 28.

Note also, that he who hath Land adjoyning next to the Kings High-way, by the Common Law (before these Statutes) was and is chargeable, and bound of common right, to cleanse and scour the Ditches adjoyning to the said Way, *scil.* Between his Land and the High-way, "without any Prescription so to do; but if anothers Land lie next the High-way, "then he that lies not next, is not bound, but by Prescription.

Styles, p.  
364. per  
Rolls.

Rolls 1 p.  
of Abridg-  
ment 390.

At *Lent* Affizes at *Cambridge*, Anno 1622. Sir *Ja. Ley* delivered it in his Charge, That if any person hath made, or shall make, any Inclosure next the Kings High-way, that such person shall be charged to amend the High-way adjoyning to his said Inclosure; 'especially where he hath inclosed on both sides the way, he shall be charged with mending the whole 'way between his Inclosures.' And if one Man hath inclosed on the one side or part, and another Man on the other side, they shall be both charged to amend the same way; 'and the Parish is to be discharged'.

Otherwise, High-ways must be sufficiently amended at the charge of the whole Town; and it is not enough for the Inhabitants to do their full six days work yearly, except their Ways be all well and sufficiently repaired: For if all their said Ways be not sufficiently amended, the whole Town may be indicted therefore.

"Where a High-way lies out of a Parish or Hundred in a County, "the County ought of right to repair it; and Process shall go against the "whole County.

'Because every Town regularly is to maintain and amend the High-ways within their own Parish, except it can be proved to have been usual-ly amended by any other person, or Town, or by the Hundred, or County, ' &c. Therefore if six days work in the year will not serve to amend them, 'the Surveyors may, yea must, appoint more days, &c.

"And in the Case of *Mile-end-green*, it was resolved *M.* 1649. that "a Hamlet is not bound of common right to repair the High-ways, unless "it be by special Custom; but a Village or Town is, as I have it in a "MS. and you may see to the same purpose *Stiles Rep.* p. 163.

Also concerning the Causey (near *Cambridge*) called Doctor *Harveys* Causey, towards the repair whereof Doctor *Harvey* hath given Eight pounds *per annum*, (payable by the Master and Fellows of *Trinity-Hall* in *Cambridge*.) Sir *James Ley* said, That if this Eight pounds *per annum* were not sufficient to repair the said Causey, that then the Towns adjoyning, within which that Causey or Way doth lie, ought to help to repair the same.

12 E. 4. 9.  
9 E. 4. 9.  
2 E. 4. 9.  
8 E. 4. 9.

It is called the Kings High-way, for that the King at all times hath therein passage for himself and all his people, and may punish all Nufances therein; though otherwise the Interest thereof be in the Lord, to take all the Trees, and such other Profits there growing, and to bring his Action for digging therein, or for any other like Trespass there done.

§. 11.  
High-way.

Fitz. N. B.  
113. a.

And the King (by the Common Law) may award his Commission for the amending of the High-ways and Bridges throughout his Realm, so as his people may have safe passage thereby.

P. 1.

10. If any chosen to be Surveyor shall refuse the Office, or will not take upon him the execution thereof, 2 & 3 P. & M. every Justice of Peace may present this, as aforesaid.

§. 12.  
Surveyors  
their Duty.

"Every Surveyor, within Twenty days after notice of his Election, "shall upon the penalty of 5 *l.* view the Common Highways and Bridges "within his Division, and all Water-courses, Causeys, and Pavements, "which are to be amended at publick charge, and to make a Tax for the doing

"doing of what will not be done by the former Laws. 14 Car. 2. c.6. But that Act as to the Power of Taxing was to continue for three years, from the Twenty fifth day of *March*, 1662. Yet afterwards by the Statute of 22 Car. 2. the Justices of Peace in their Quarter Sessions, being satisfied, the Statutes then in force, and the Provision by them made, would not effect the said Repairs, may make Assessments; but that Power is also expired, being to continue until our *Lady-day*, 1673. and no longer.

11. So if the Surveyors shall not within one Moneth after any of the former Offences committed, present every such Offence to the next Justice of Peace. 5 Eliz.

§. 13.  
Estrates &  
Levies.

12. Also if the Bailiff or High Constable (who hath received an *Estrat* P. 10. for the levying of any Forfeiture upon these Statutes) shall not levy the same, or shall not (between the first day of *March*, and last of *April*, yearly) make a true account and payment of all sums as he hath levied to the Constables and Church-wardens of every Parish, wherein the Offence was committed; or, if the Constables and Church-wardens have not employed the same upon their High-ways; it seemeth every Justice of Peace may (upon their own knowledge) present every of these Defaults, as aforesaid. *Raft. 199c 2 P. & M.*

"The Surveyors chosen in *Christmas* week according to the Statute of 22 Car. 2. shall take the Office and appoint Six days for providing Materials, and working in the High-ways, having respect to the season of the year and the weather, and giving convenient publick notice; at which days, all persons liable to work, shall attend, and the Surveyors shall make return of Defaults within one Moneth after default, to some Neighboring Justice, who shall present the same the next Sessions, and the Offender shall incur the Penalties by Statute now in force. 22 Car. 2.

"If any person make default of his days Labors, or Carriages, and Horses, the Surveyors shall complain to the next Justice of Peace; who upon proof of such default by one credible witness, is to levy of the parties offending Goods (not having reasonable excuse to be allowed by such Justice) their Penalties of a day Laborer, 1 s. 6 d. For every Man and Horse 3 s. For every Cart and two men 10 s. 22 Car. 2.

And if the Surveyors shall present any of the former Offences (by them to be presented) to the next Justice of Peace, within one Moneth next after the Offence committed; the same Justice ought to certify such Presentment at the next General Sessions, *sub pena* 5 l. But if the Surveyors do not make their Presentment to the Justice till after the Moneth, and the Justice certifieth it, this seemeth not good against the Offenders. P. 3.

§. 14.  
The Surveyors Authority.

Every such Surveyor (for the better amendment of the ways within the Parish) may by their discretion take and carry away the rubbish or smallest broken stones of any Quarry within their Parish, *scil.* Such rubbish as they shall find there ready digged by the owners of the said Quarry, or otherwise by their License. § Eliz. 15. P. 5.

§. 15.  
Materials.

Every such Surveyor may also (for the use aforesaid) dig for and take, or cause to be digged for and taken, (in the several Grounds of any person within the Parish, near adjoyning to the way to be amended) any Gravel or Sand; so as they dig in no Mans Garden, Orchard, or Meadow, and but one only Pit, and not above ten yards over at the most, and the same within one Moneth to be filled up again with Earth at the charge of the Parish. *Ibid.*

Every

Ibid.

Every such Surveyor may likewise cause Stones to be gathered upon any mans ground within the Parish, and the same to carry away for the use aforesaid.

“And if there be not sufficient materials in any Parish for the Repair of the High-ways, then the Surveyors, or such as they shall appoint, may by allowance of Two Justices of Peace take Gravel, Chalk, Sand, Cinder or Stones out of the Waits or Commons of any Neighbouring Parish, &c. or on the Sea-coast; So as they fill up the place within a moneth, if required. 14 Ca. 2. c. 6.

“And where there are not sufficient Gravel, Chalk, Stones, Cinders, or Sand in the waits or Commons of any Parish, the Surveyors may enter into any mans several grounds (not being House, Orchard, Garden, Court-yard, Park with Deer in it, or Meadow) in the same Parish near the High-ways to be Repaired; and take any quantity of such materials without paying any thing, except where formerly composition hath been paid, rendring such damage to the owner as Two Justices of Peace near the place shall Assess, and filling up the Pitts, as by the Statute of 5 El. is directed, Stat. 14 Ca. 2. c. 6.

P. 6.

Every such Surveyor may cause any Water-course or Spring of Water (being in the High-way within their Parish) to be turned into another mans several Ditch (or Ground) next adjoyning to the said way, in such manner as by the discretion of the said Surveyor shall be thought meet.

“Where a Common way is not of the breadth of Eight yards from the Shores and Brinks of the Ditches on either side, or from the Banks and Hedges where there are no Ditches, the Surveyor by order from the Quarter-Sessions, and upon the view, and by the allowance and consent of Two or more Justices of the Peace authorized thereunto by the Sessions under their hands and seals, to lay out of any mans Land next adjoyning to such way, where they shall think it needful and conveniently it may be done, as shall enlarge it to the full breadth of Eight yards, or so much broder towards the breadth of Eight yards than now it is, as conveniently the place will bear from the Shores, Ditches, Bankes or Hedges, and by consent of the owners; or otherwise by order of the Justices of Peace at their Quarter-Sessions, after a Writ of *Ad quod dampnum* first issued and returned to lay out a more new and commodious way in and over the Lands next or near adjoyning; The Surveyors giving satisfaction to the owners, not exceeding Twenty years purchase: which new way shall be Repaired by such Parish, &c. or by such persons as the old or former way was to have been. 14 Ca. 2. c. 6. §. 16.

P. 11.

2 P. &amp; M.

Also any Two Justices of Peace, (the one being of the *Quorum*) upon complaint to them made by the Church-wardens of any Parish, may convene before them the Bailiff and High Constables, (to whom the Clerk of the Peace or Steward of any Leet hath delivered any Estreats for the Collecting of the Fines, Forfeitures, or Amercements for the Defaults aforesaid) and may take their Accounts; and may compel them to pay all such Arrerages, as they shall adjudge, to the Constables and Church-wardens of the Parish where the Offence was committed; or may imprison them until they have paid such Arrerages. §. 17. Two Justices, Accountrs.

P. 11.

Every Bailiff and High Constable upon their said Accounts shall have allowed for every pound he shall Collect and Pay 8d. for his own pains, and 12d. for the Fee for the Estreat delivered him.

Also it seemeth any Two such Justices of Peace, upon complaint to them made by the succeeding Church-wardens, or Constables, may convene before them the precedent Constables and Church-wardens, and may take their



their Accounts and may compel them (as aforesaid) to pay all Arrerages in their hands. 2 & 3 P. & M. 8. The Offences against 18 El. 10. shall be <sup>2 P. & M.</sup> "heard and determined in their open Sessions. 18 El. 10. So that it seems "they can do nothing relating to that Statute but in Sessions.

Note, That all such Fines or Forfeitures arising in the Sessions, shall be levied by Estreats indented, made by the Clerk of the Peace, who shall Seal and Sign such Estreats, and shall deliver the one part thereof so sealed and signed to the Bailiff or High Constable of the same Hundred; and the other part thereof to the Constables or Church-wardens of the Parish where such Default was made; and to be delivered by the Clerk of the Peace within Six weeks after *Michaelmas* yearly; the which Estreats shall be a sufficient Warrant to the said Bailiff or High Constable, to levy such Fines and Forfeitures by Distress: and all such Fines and Forfeitures shall be bestowed by the Church-wardens on the High-ways in the same Parish. "All Forfeitures by 18 El. 10. shall be levied by the Surveyors by Distress and Sale, and the Money shall be employed on the High-way; and "if they levy it not within a year, then the Constables and Church-wardens may levy it, and shall Accompt. 18 El. 10.

Also Two Justices of Peace (by the Statute 18 El. 10.) may take the Accompt of the Surveyors of the Ways, and of the petty Constables and Church-wardens, for all such Forfeitures (within the Statute) as they have levied. 18 El. cap. 10. <sup>18 El. 10.</sup>

- §. 18. "All charitable Gifts for making or repairing High-ways, Pavements "Cause-ways; all Issues for not appearing to Indictments or Informations, "for not repairing High-ways, or removing Nuisances, all Fines and Amendments on places or persons for not repairing High-ways not otherwise "thereby disposed off, shall be employed on the High-ways to be levied by "the Surveyors by Warrant under Two Justices of Peaces hands by Distress and Sale. 14 Ca. 2. c. 6. And for them, such Surveyors shall within "one moneth after the end of his year, Accompt with the Inhabitants, "as well what he hath received and employed, and how, and of all Arrears "thereof, and shall pay over the overplus, and for default of such Accompt, upon complaint, Two Justices of Peace living near to, or in the "Parish, may examine the business, and send the Surveyor to Gaol, untill "he shall make a true and perfect Accompt and payment. 14 Ca. 2. c. 6.

Here I thought good to move some doubts that have arose upon the former Statutes; and desire that some Resolution may hereafter be given, for better satisfaction, for that they be so ordinarily questioned.

- §. 19. <sup>Co. 9. 124</sup> <sup>Co. L. 59</sup> What, and how much a Plough-land is, Sir *Ed. Coke* in his Ninth part, <sup>Co. 9. 124</sup> <sup>Co. L. 59</sup> in *Low's Case*, and upon *Littleton*, telleth us, and saith, That a Carue or Hide of Land, or a Plough-land, which is all one, is not of any certain content, but so much as one Plough may Plough in one year; and so in some Countrey it is more, and in some other it is less (according to the heaviness of their soil:) and herewith agreeth Mr. *Lambert*, *verbo Hide*.

"Differences arising upon several Presentments, what should be conceived a Plough-land, an Order of Explanation was made, that One "hundred Acres should be Ten esteemed, and 1 d. an Acre for all more; "1. October, 16 Jac.

- <sup>Plough-land.</sup> "And afterwards upon the same difference 80 Acres was to be accounted "a Plough-land and so proportionably to be charged for mending the "High-ways, Ord. 28. Apr. 12 Car. lib. Sef. Pac. Mid.

And of the same Opinion was Judge *Prisot*, 35 H. 6. 29. where he saith, <sup>35 H. 6. 29</sup> That a Carue of Land is greater in one Countrey than in another, for that

a Plough may Plough more Land in the year in one Countrey than in another.

And yet some others do make a difference between an Hide of Land, and a Carue or Plough-land: for they say that an Hide of Land doth contain Four Plough-lands, *sc.* 480 Acres; whereas a Carue or Plough-land containeth but Sixscore Acres: and every Plough-land or Carue is Four Yard-land, (in Latine called *Quatrina terra*) every Yard-land containing 30 Acres. But a Plough-land, or Carue of Land, is called in Latine, *Carrucata terra*, that is, *quantum aratrum arare potest in æstivo tempore*: for which see M. Skene, *Minsh.* and the *Surveyors Dialogue* made by John Norden, page 59. And yet this definition or description of *Carrucata terra* sheweth that it is not of any certain content.

Also a Carue of Land (or a Plough-land) may contain House, Meadow, Pasture and Wood. *Co. L. 69.*

1. Now a man with one Plough and Five or six Horses will occupy, Plough and Drefs Seven or Eightscore Acres of arable Land yearly, (as many do with us in the East parts of *Cambridge-shire*) and will in Summer go usually with Two Draughts or Carts; yet such person is usually charged to the amending of the High-ways but with one Cart furnished. And another man dwelling in the same Town, occupieth but 40 or 50 Acres, or not so much, and keepeth but Three Horses, and one Draught or Cart, and he likewise is usually charged as the former, with one Cart furnished. Whether should their Two charges for Carriages for the High-ways be alike? For mine own Opinions, I think it both reasonable, and warranted by the words of the Statute, that he that for his own private business shall usually make and set up Two Draughts or Carts, shall also for the King and Countries Services be chargeable with Two Draughts or Carts, though he occupy all his Land but with one Plough.

"This matter came in debate in *B. R. M. 27. Ca. 2.* upon order made by "the Justices of the Peace in *Middlesex* for charging several Brewers and "Brickmakers living there, and using several Draughts, or Carts, to send "so many as they kept for the repairing of the High-ways, and the order "being removed in *B. R.* a *procedendo* was awarded by *Hales* Justice, and "the whole Court, who were strongly of opinion, that so many Draughts "as they kept, so many they ought to send, for, so the service they do will "answer the wrong and damage by them occasioned."

2. Again, what a Draught or Carriage shall be, *sc.* with how many Horses; and whether he that keepeth but Two Horses and a Cart (as many with us do) be chargeable or no: I find that a Draught for the Kings Carriages heretofore hath been sometimes with Two Horses, as it seemeth by the Statute of *Magna Charta, cap. 21.* (the words of the Statute be, *No Sheriff, &c.* shall take the Horses or Carts of any person for Carriage, except he pay for one Cart with two Horses *x d.* by the day, and for a Cart with Three Horses *xiv d.* by the day:) and therefore I should think him that usually goeth to Cart (for his own business) with Two Horses, to be chargeable to find a Cart and Two Horses for the amending of the High-ways, and to carry such Loads as his Two Horses are well able to draw.

3. Again, if one occupieth a Plough-land in Pasture, *viz.* Six or eightscore Acres or more of Pasture for feeding of Cattle, but keepeth neither Cart nor Plough, how shall he be charged to find a Cart or Draught that keepeth none? and yet the words of the Statute, 2 & 3 *Ph. & Mar. & 18 El. 9.* seem to charge him.

4. Again, he that shall keep a Draught for Carriage, or a Plough, though he occupy little or no Land or Pasture in his own hands, but only Carteth

Carteth or Plougheth for other men, whether he is not chargeable to find a Cart for the amending of the High-ways. It seemeth he is: But *quere* whether he be chargeable to find Two able men with his Cart, \* except he hath in his occupation a Plough-land: perhaps also he keepeth never a man. \* P. 2.

§. 21. "No Travelling Waggon, Wain, Cart or Carriage, wherein any Burdens, Goods or Wares shall be carried (other then such Carriages as are employed in Husbandry, or manuring Land, or for carrying of Hay, Straw, Corn unthreshed, Coal, Chalk, Timber for shipping, materials for building, Stones, or His Majesties Ammunition or Artillery) shall go with above Five Horses at length; and if any shall draw with a greater number of Horses or Oxen, they shall draw in pairs, except one Horse: and if offending, and do otherwise, the owner shall forfeit for every Offence 40 s. viz. One third part to the Surveyors for the High-ways, another third part to the Overseers for the Poor, the other third part to the discoverer, to be levied by any Officer by Warrant of any Justice of Peace by Distress and Sale. 22 Car. 2.

§. 22. *Officers neglect.* "Any Constable, or Surveyor not putting the Acts, touching the repair of High-ways in Execution, or suffering Carts to pass through their limits, otherwise then as aforesaid, shall upon complaint to any Justice of Peace of that place, or division, and proof of such neglect, by Oath of one credible Witness, or upon view of such Justice incur such Fine, as such Justice shall impose, not exceeding 40 s. to be levied as last aforesaid. 22 Ca. 2.

*Resisting.* "If any person shall resist or oppose any person employed in the due Execution of the Acts, touching High-ways, or make rescue of any Goods distrained, being convicted in form aforesaid, shall forfeit 40 s. which if he pay not within Seven days after notice of such conviction, any Justice of Peace residing near the place of such rescue or opposition, may commit him to Gaol, till he pay the forfeiture to the Surveyor. 22 Car. 2.

§. 23. *Charities.* "Justices of Peace (amongst others) may hear and determine matters concerning charitable Gifts for making or repairing High-ways, Pavements, Streets and Causeys, and make orders for the employment thereof according to the will of the Donors (except Gifts to the aforesaid uses to any Colledge, Hall, Free-school or Hospital, which have proper visitors,) and all Offences, Defaults and Defects in Surveyors, or others touching the premisses. And if any be grieved with such orders, he may appeal to the Chancery, as in case of a Decree made upon the Statute of charitable uses. 14 Ca. 2. c. 6.

*Gifts.* "Where Lands are given for maintenance of Causeys, Pavements, High-ways or Bridges; the Feeoffees and Trustees shall let them to Farm at the best improved value without Fine: And the Justices of Peace in their Quarter-Sessions may inquire into the value thereof, and if they find a neglect or fault in the Trustees, may order the improvement and employment thereof (except where there be proper visitors) 22 Car. 2.

§. 24. *Time.* "Where the High-ways cannot be repaired before *Midsummer day*, the same may be repaired before *St. Lukes day* yearly, without incurring any penalty. 22 Ca. 2.

§. 25. *Where presentable.* "All defects of repairs of High-ways, Causeys, Pavements, or Bridges, shall be presented only in the County where they lie, and not elsewhere, and that no such Presentment or Indictment shall be removed by *Certiorari*.



"*rari*, or otherwise out of the said County, till Traverse and Judgment given. 22 Ca. 2.

"A Bridg lying between Two Counties, and nor known in which of those two Counties part lies, nor who ought to repair the same, an Indictment for the same seems to be removable by *Certiarari*, notwithstanding this Statute, so likewise if a person in respect of Lands in one County, ought to repair a Bridg or High-way in another County, *ne deficeret iustitia*.

"Note, the Statute of 14 Ca. 2. as to all clauses and powers therein (except the making a Tax) is to continue untill the end of the first Session of the next Parliament and no longer, but the Statute of 22 Ca. 2. is perpetual, saving only as to the power of Taxing. §. 26. Statutes.

"The Justices of Peace have also power in their Sessions by Indictment, to punish by Fine all Nuisances, Incroachments, and Purprestures in the High-ways, as namely; §. 27.

"1. The building and erecting of Gates on the High-ways, where none have anciently been, and these as every private person may pull down and break, in order thereto, if it cannot be done otherwise, as was resolved in the case of *Jones and Harward*. P. 6 Ca. B. R. *Jones*, rep. p. 221. & *Cro. 1 part*, p. 133. So the person so doing may by Indictment being found guilty be fined therefore, and enjoined to remove the same.

"2. The incroaching on any part of the High-way by building, or other inclosure, the King shall have the punishment of it, although the Soil be anothers.

3. Anothers annoying thereof, by laying Carrion in the same.

"4. The overflowing the same with Water stoppt in those Wares, or in any mans private Grounds; whereby the publick Ways are overflowed.

"5. Digging Pits in the ways, or near them, by which passage becomes dangerous.

"6. The laying Loggs, or any things obstructive of their use, for which although none can have an Action, but he that hath particular and special damage, that any one may indict and so procure to be reformed.

And for the Northern High-ways, as *York*, *Lincoln*, &c. see the Act 15 Car. 2. cap. 1. Stat. 3. and the Act of 16 & 17 Car. 2. cap. 2.

"An Act for the necessary repairs of certain High-ways in the County of *Hartford*. 16 & 17 Ca. 2. 10 & 15 Ca. 2. c. 1.

There be also certain particular Statutes concerning High-ways and streets, as followeth. CHAP. LI.

The Occupier of any Iron-works, for every Three Loads of Coal or Mine, and also for every Tun of Iron that he shall cause to be carried in Winter-time by the space of one mile in the High-ways within the Wilds of *Essex*, *Surrey*, or *Kent*, shall pay to the Justice of Peace dwelling near to the places in that County where the High-ways shall be most annoyed, or to his Assigns, 3 s. in money; the same in default of payment to be levied by Distress by such Justice, or his Assignee, of the goods of the party in the said County. §. 1. One far. Bitt. wild.

Also such Occupier, for every 30 loads of Coal and Mine, and for every Ten Tuns of Iron carried in the said High-ways, &c. shall pay one load of Cinder

Cinder, Gravel, Stone or Chalk, in places to be appointed by such Justice, or else, within Eight days after demand, shall pay 3 s. for every such load to the hand of such Justice, who, upon default of payment, shall levy the same by Distress, &c.

The said Justice of Peace shall bestow all such sums of Money upon the amending the same High-ways, at his discretion. P. 2.

Two Ju-  
stices.

Two Justices of Peace, whereof one to be of the *Quorum*, which were present at the Sessions wherein any person was convicted for any Offence against the Statute of 39 Eliz. may make Warrant for levying the Forfeits thereof to any Constable or other Officer: and they may also appoint such ways and means as they shall think meet, to levy the double sums for not paying those Forfeits within 20 days next after lawful demand of the same by such Officer. 39 El. 19.  
P. 22.

§. 2.  
New ways

By the assent of Two Justices of the Peace, and Twelve discreet men of the Hundred and Hundreds adjoining, any person may make and lay out, in and over his own Land in Fee-simple, in the Wild of Kent, as also in the County of *Sussex*, a new High-way more commodious than the old; and instead thereof may retain the ground of the old Way in severalty to him and his Heirs: and the same Justices and Twelve men shall within Three moneths certifie under their Seals such new Way into the Chancery *sc.* the length and breadth of the same new Way, and other things adjoining or concerning the same, according to their discretion. 14 H. 8. c. 6.  
25 H. 8.  
c. 7.

Upon Petition and difference, &c. Ordered that the whole Parish, and not the Hamlet adjoining only, do joyn in the repairing the High-way about *Mile-end-Green* and *Stratford*. Ord. 21. Apr. 7 Car. lib. Sess. Pac. *Middlesex*. See more in cap. London.

§. 3.  
Commissioners.

By the Statute of 13 Ca. 2. St. 2. c. 2. The King may nominate 21 Commissioners, besides certain others thereby appointed to Survey, Order and Manage the High-ways, Streets, Alleys and Passages leading unto and from the Cities of *London* and *Westminster*, and the Suburbs and other places within the present Weekly Bills of Mortality, vide that Act.

§. 4.  
Cleaning.

Every Inhabitant in *London*, *Westminster*, Suburbs and *Southwark*, shall twice every Week on *Wednesday* and *Saturday* sweep before their houses and buildings, and take up the dirt ready for the Scavenger or other Officer, or else for every Offence or Neglect, forfeit 3 s. 4 d. 13 Ca. 2. St. 2. c. 2.

If any throw, or permit to be thrown Ashes, Filth, or Annoyance before his house, Building or Wall, shall forfeit 5 s. If before any Church, Church-yard, or publick Buildings, or into any Sink, or way publick or private; but shall keep it in their houses and yards, untill the Officers come to carry it away, or else forfeit 20 s. 13 Ca. 2. St. 2. c. 2.

§. 5.  
Officers  
liable.

Church-wardens, House-keepers of *White-hall*, or other the Kings houses, or of Noblemens houses, shall be subject to like penalty; so shall Ushers of Courts, and Porters, and keepers of other publick Buildings. 13 Ca. 2. St. 2. c. 2.

No Vessels shall be hooped, washed or cleansed in the Streets, nor empty Coaches stand, nor Timber or Stones be wrought there, upon penalty of 20 s. *ibid.*

§. 6.  
Scavengers

Scavengers and Officers shall come every day (except Sundays and Holidays, and give notice that the parties concerned may bring out their dust, &c. or forfeit 40 s. for every neglect.

§. 7.  
Paving.

Every Householder shall pave and keep repaired the Streets before their Houses and ground unto the Channel, or else forfeit for every Rod 20 s. and 20 s. every Week untill it shall be sufficiently repaired; *ibid.*

“Where

"Where Streets, Lanes or Alleys, have been by custom otherwise repaired, it shall be done by such persons as are by custom to do it, under the penalties aforesaid, *Ibid.*

"Every Householder next the Street, shall from *Michaelmas* till our Lady *§. 8.*  
*day* set out lights in Lanthorns, or otherwise in some part of his house *Lights.*  
 next the Street, or else forfeit 1 s. *Ibid.*

"One Justice of Peace upon View or Confession, or Oath of one Witness, may convict any of the Offences aforesaid, if conviction be upon *§. 9.*  
 view, the whole penalty to go to the repairs; if upon proof, then one *Conviction and penalty.*  
 moiety to the repair, the other moiety, or as much of it as the Justice please to the Prosecutor, to be levied by the Justices Warrant under hand and seal to the Constable by Distress and Sale, or for want of Distress or Payment within Six days after notice at the house, to be sent to Gaol without Bail, untill payment. *Ibid.*

"In London Scavengers and Officers shall be chosen, and Rates made as *§. 10.*  
 according to ancient custom; so likewise in *Westminster.* 13 Car. 2. *Scavengers and Rates.*  
*St. 2. c. 2.*

"In other places and Parishes in that Act mentioned within the limits of Bills of Mortality on *Tuesday* or *Wednesday* in *Easter* week, The Constables, Church-wardens, Overseers, and Surveyors, giving notice, and calling such Inhabitants that have served that Office, shall chuse Two Tradesmen to be Scavengers; who being allowed under the hand of any two Justices, shall within Seven days take the Office, or pay 20 l. and within Seven days after such refusal they shall in like manner chuse another, who shall accept or pay 20 l. which penalties to be levied by Distress and Sale, and for want of Distress or Payment within Six days after notice at his house, to be sent to Gaol until payment. 13 Car. 2. *St. 2. c. 2.* Within 20 days after such Election, the Constables, &c. shall call such Inhabitants as have born the like Office, and make a Tax by a pound rate, which being confirmed by two Justices shall be quarterly paid upon demand made by the Beadle, or other Officer to be appointed, and being refused, shall by Warrant of two Justices be levied by Distress and Sale. 13 Car. 2. *St. 2. c. 2.*

"But by the Statute of 19 Car. 2. c. 3. The Lord Mayor, Aldermen and Common Council of London, have power to declare which shall be Streets, *§. 11.*  
 Streets and Lanes, and to stake them out, and the number and places for Streets, London;  
 common vaults, drains and sewers; and the repairing the Streets is appointed to be set and ordered by them, or such persons as they shall appoint under their common seal, who shall make any Tax for that purpose, and thereby the Commissioners powers by the former Act are taken away, and they have power thereby to make Laws and Orders touching the same, and the persons offending against such Orders, shall be proceeded against at the Sessions until they shall conform, and an appeal from any Tax is to the Court of Aldermen, which is to be final. 22 & 23 Car. 2.  
 "Certain Streets in London ordered and enlarged. 22 Car. 2. *§. 12.*

See more of High-ways, tit. Bridges and Robbery.

"Touching alteration of High-ways in the Wild of Kent. See 14 H. 8. c. 6. *§. 13.*  
 "Touching the repair of *Huntington* lane near *Chester.* See 37 H. 8. c. 3.  
 "For the repair of the High-way between *Shaftesbury* and *Sherborn.*  
 See 1 M. 5.  
 "For the repair of the High-way between *Bristol* and *Gloucester.* See 1 M. 6.  
 "For the repair of the High-way near *Oxford.* See 18 El. 20 & 35 El. 7.  
*Horfe.*



## Horse. CHAP. LII. V. 27.

**§. 1.** *Claim.* Every Justice of Peace (after Sale made in open Fair or Market of any stoln Horse, &c.) at any time within Six moneths next after the said \*Sale, ('or rather next after the Felony done') may take and hear the claim and proof of the right owner, (from whom the same was stoln, or of his Executors or Administrators, or other person by their appointment;) which proof must be by two sufficient Witnesses upon Oath, to be made within Forty days next ensuing such claim. 31 Eliz. cap. 12.

\* Lamb.  
105. See  
the Stat.

Also the same Justice of Peace may minister an Oath to the party that bought the said Horse, or that had the possession and interest of the same Horse, what Money he paid for the same *bona fide*, so as the right owner, repaying the same, may have his said Horse again. *Ibid.*

P. Fair &  
31 Eliz.

**§. 2.**  
*Market.*

Note, that in every Fair or Market where any Horses, Geldings, Mares or Colts are to be sold, there ought yearly to be appointed out one certain and special open place where the said Horses, &c. shall be sold; and one sufficient person or more to take Toll, who shall continue in the said place from the hour of Ten before Noon until Sun-setting every day of the aforesaid Fair, 2 & 3 P. & M. cap. 7.

Also note, every Sale, or other putting away, in any Fair or Market, of any stoln Horse, &c. not being according to the Statute in every point, (sc. in every of these particulars following; as it seemeth) is void, to alter or take away the property of the owner, from whom such Horse was stoln. *sc.*

2 & 3 P.  
& M.  
31 Eliz.  
P. 5. 11

**§. 3.**  
*Sale.*

1. If the Horse be not, in the time of the said Fair or Market, between Ten of the Clock and Sun-setting, one hour together (at the least) in the open place of the Fair, &c. Where Horses are commonly sold, 2 P. & M. the Sale is void, &c.

2. If all the parties to the bargain being in the Fair shall not come together with the Horse to the Book-keeper to the open place appointed, 2 P. & M. the Sale is void, &c.

3. If the Book-keeper, Toll-taker, Bailiff, or other chief Officer of the same Fair or Market shall not take perfect knowledge of the Seller, or of the Voucher, *sc.* of their true Christian name, Sir-name, mystery, and place of dwelling, or shall not enter all the same into his Book, the Sale is void, &c. And one Voucher is enough, if he be a sufficient and credible person.

31 Eliz.

4. But if the Voucher be not a sufficient and credible person, or if the Voucher shall not know the Seller indeed, or shall not truly declare to the Book-keeper, &c. the Christian name, Sir-name, mystery, and place of dwelling, as well of himself as of the Seller, (as it seemeth) the Sale is void, &c.

31 Eliz.

5. If the Book-keeper, &c. shall not make entry into his Book of the true Price that the Horse is sold for, with the Colour, and one special Mark at the least of the same Horse, &c. 2 P. & M. & 31 Eliz. the Sale is void, &c.

6. So if a true and perfect note in writing, of the name of the Seller or Voucher, and of their dwelling, &c. and of the price, be not given to the Buyer by the Book-keeper, &c. and subscribed with his hand.

31 Eliz.

7. And lastly, if Toll be not paid where Toll is due, or the Book-keeper not paid for the Entry, &c. *Vide* 12 E. 4. fol. 8. *Crompt.* 91. *Fi.* 45.

2 P. & M.

If the Thief which stealeth an Horse shall sell the same Horse in Market overt or Fair by a false name, and it is so entred into the Toll-book, such

mis-

misnaming of the Seller maketh the Sale void against the right owner of the Horse. And this was the Opinion of *Windham* and *Rhoads* Justices, (upon this Statute, 2 & 3 P. & M.) Anno 30 El. in a Case between *Gibbs* Plaintiff against *Bastel*; the Case being thus: One *Potter* did steal the Horse of the Plaintiff, and sold him to the Defendant in Market overt, by the name of *Lyster*, and so it was entered into the Toll-book, that *Lyster* sold the Horse, whereas his name was *Potter*; whereupon *Gibbs* the Plaintiff brought his Action of the Case *Sur trover* against the Defendant *Bastel*, &c.

Note also, that every Contract for any stolen Horse, &c. made out of open Fair is void, though they be after Booked. *Dyer* 99.

Co. 3. 78. Also, a Sale in a Fair or Market overt shall not take away the Owners  
83. property, where the Buyer doth know that the property was to another  
7 H. 7. 12. man, or where the Buyer knoweth that the Horse, or other Goods were  
Co. 5. 83. stolen. See *postea*, *tit. Restitution*.

Also to alter the property of a Stranger having right, Horses and all other Goods are to be sold in such a place, or shop, as is commonly used for the selling of Goods of the same kind or nature.

Also a Sale upon a Sunday, though in a Fair or Market overt, shall not be a good Sale to alter the property of the goods by *Brian*. 12 E. 4. fol. 1. b.

And indeed Fairs and Markets kept upon the Sabbath-day are prohibited by the Statute of *Winch*, c. 6. and of 27 H. 6. cap. 5. And now by the Statutes, 1 *Eliz.* cap. 2. & 3 *Jac.* cap. 4. all persons resorting upon the Sabbath-day to any Fair or Market, and by the means thereof absenting themselves from the Church, or not abiding at the Church orderly during all the time of Prayer, Preaching, and other Divine Service, are to be punished by any one Justice of Peace, according to the form of the said Statute, 3 *Jac.* (which see *hic postea*, *tit. Recusants*) or by the Ordinary, or Bishop of the Diocese, by the Statute 1 *Eliz.* Or otherwise the Offender may be indicted (for such his absence from Church) at the Quarter Sessions of the Peace, or general Gaol-delivery, as it seemeth.

§. 4:  
Sunday.

Also the Lord of such a Fair or Market kept upon the Sabbath-day, contrary to the Statute, may be therefore indicted for the King, either at the Assizes and general Gaol-delivery, or at the Quarter Sessions of the Peace within that County. *Plus hic postea*.

But yet for that by non-user of a Franchise, Fair or Market, they may be forfeited and seized; therefore Fairs anciently holden upon Sundays, or upon other principal Feast-days, might be holden and kept within three days before or after any of the said Feasts, after Proclamation first made what day the Fair shall be holden, though the Lord of the Fair hath otherways no power to keep his Fair but upon such day. Statute. 27 H. 6. cap. 5.

"No Commoner in any Forest, Chase, Moor, Marsh, Common or waste  
"Grounds; Nor any Officer thereof in Norfolk, Suffolk, Cambridg,  
"Buckingham, Huntingdon, Essex, Kent, Southampton, Northwiltshire, Oxford-  
"shire, Barkshire, Worcester, Gloucester, Shropshire, North-wales, South-  
"Wales, Bedford, Warwick, Northampton, Yorkshire, Cheshire, Staffordshire,  
"County of the City of York, Town of Gloucester and Liberties, Kingston  
"upon Hull, Lancaster, Salop, Leicester, Herefordshire and Lincolnshire; shall  
"put to Pasture there any stoned Horse or Horses above the age of Two  
"years, and under the height of 15 handfuls, to be measured from the  
"lowest part of the Hoof of the forefoot unto the highest part of the  
"withers; every handful to contain 4 Inches by the Standard, to feed or  
"depasture there, upon pain of forfeiture of the Horses found there.  
"32 H. 8. c. 13.

§. 5.  
what Horse  
may be  
put into  
Common.

*Seizure.* "These persons finding such Horses therein, shall go to the keeper of such Forest or Chase, his Deputy or Deputies, or to the Constable, Bailiff, Headborough, Borsholder or Tithingman of any Town next adjoining, and command them to go and bring such Horses to the Pound, there to be measured by such Officer or Officers, in the presence of Three honest persons to be named and appointed by the Officer, and if he be one found contrary, such person challenging him, may take him to his own use. 32 H. 8. 13.

*Neglect.* "If any the said Officers or persons to be appointed, shall refuse to measure, or not measure justly, every of them shall forfeit for not doing, or refusing 40 s.

§. 6. "All Forests, Chases, Commons, Moors, Marshes, Heaths and waste Grounds in England and Wales, shall be driven yearly by the owners, or Officers of the same, and by the Constables, Headboroughs, Bailiffs, Borsholders and Tithingmen, within whose limits they lie, upon pain that every of the said Officers not so doing at Michaelmas every year, or Fifteen days after, shall forfeit 40 s. for every time, and the Lords owners and possessors may by the Officers aforesaid, make such drift at any other time in the year.

*Killing Fells.* "If upon such drift, there shall be found any Mare, Filly, Fole or Geldling, that shall not then be thought able, or likely to grow to be able to bear Foles of reasonable Stature, or be likely to grow to be profitable for labor, in the discretion of the drivers, or the greatest number of them. The drivers shall cause the same Beast to be killed.

§. 7. "The Justices of Peace and Stewards of Leets may inquire of all Defaults, Contempts, Omissions and Offences against that Act, and the Presentments in the Leet shall be certified to the next Sessions, or to the next Assizes within 40 days after it is made, and the Justices may determine the same by examination, or otherwise, and if the Steward imbezels, conceals, or do not certify, he shall forfeit 40 s. for every Offence a moiety to the King, the other moiety to the prosecutor that sues for it in the Sessions, by Bill or Information. 32 H. 8. 13.

"This Act as to the Marshes, Fenne, Seggie ground in Ely, Cambridgeshire, Huntingdonshire, Northampton, Lincoln, Norfolk and Suffolk be repealed; but none shall put into these Grounds any stoned Horse above Two years old, nor of the height of 13 handfulls, to be measured as aforesaid.

Concerning Transporting of Horses, Geldings and Mares, vide. 1 E. 6. 5. 13. 10. and 17. Transportation.

~~And whosoever shall be found guilty of any offence against the said Act, shall be liable to the punishment therein contained.~~

House of Correction. CHAP. LIII.

§. 1. "The Justices of Peace of any County, or Asssembled at any Quarter Sessions of the Peace, or the major part of them, may make order for the Erecting one or more Houses of Correction, and may make orders for the doing thereof, and for providing a stock and things necessary, and for punishment of Offenders as they shall think fit from time to time.

*Corporations.* "Justices of Peace in Corporate Towns shall put that Act in Execution, and Justices of the County shall not meddle there.

"All



- 39 El. 4. " All fines and forfeitures by that Act ( except such as be thereby other- §. 2.  
" wise disposed of ) shall be employed for Reparation of the houses of *Penalties.*  
" Correction and stock and store thereof, or for the use of the poor of the  
" Parish, as the Justice of Peace shall think fit.
- 39 El. 4. " The Lord Chancellor, or Lord-keeper may from time to time grant §. 3.  
" Commissions to inquire by Oath of persons, as by Witnesses and exa- *Commissi-*  
" mination, of Monies collected for maintenance of houses of Correc- *ons.*  
" tion, &c. which Money shall be collected, or employed for erecting or  
" maintenance thereof, that Act is continued by 3 Ca. 1. 3 & c. 7 Ca. 1.  
" c. 4.
- 39 El. 5. " Every person seized of an Estate in Fee-simple, may by Deed inrolled §. 4.  
" in Chancery, erect, found, and establish one or more Hospita s, abiding *Charities.*  
" places or houses of Correction, as well for sustentation of poor, as to set  
" poor on work, &c. See this Statute well explained. 2 Inst. 720. and that  
" Act is made perpetual by 21 Jac. 1.
- 7 Jac. 4. " By 7 Jac. c. 4. In every County where a house of Correction was not *Erection.*  
" before that time provided; It was Enacted a convenient house or houses  
" with a backside adjoining, with Mills, Turnes, Cards and necessary im-  
" plements to set idle persons on work in some convenient place or  
" Town of the County; which shall be purchased, conveyed and assured  
" to such persons, as the Justice of Peace in Sessions shall think fit in trust to  
" be employed, &c. or else every Justice of Peace was to forfeit 5 l. to be  
" employed for the erecting, procuring, &c. such house, &c.
- 7 Jac. 4. " The Justices of Peace in their Sessions may elect and appoint one or §. 5.  
" more persons to be Governor or Master of the house of Correction, who *Governor.*  
" shall have power to set Rogues, Vagabonds, and Idle and Disorderly  
" persons to work and labor being able; and to punish them by putting  
" Fetters or Givens on them, and by moderate whipping of them; which  
" persons shall not be chargeable to the County, but shall have such allow-  
" as they deserve by their labor.
- 7 Jac. 4. " The Justices of their Sessions may appoint an yearly allowance to the *Allowance.*  
" Master of the house of Correction, to be paid Quarterly beforehand, by  
" the Treasurer appointed by 43 El. 2. The Master giving security for  
" continuance and performance of the service, which if the Treasurer  
" shall not do, the Master may levy it, as the Treasurer might have done.  
" See this Statute well expounded, and explained by my Lord Coke.  
" 2 Inst. 728.
- 7 Jac. 4. " If the Governor shall not every Quarter Sessions yield a true and law- §. 6.  
" ful Accompt to the Justices, of all persons committed to their custody, or *Governor's*  
" if the persons committed, be troublesome to the Country by going *Duty.*  
" abroad, or shall escape away, before they be lawfully delivered; The  
" Justices may in Sessions set down such Fines and Penalties on the  
" Master as they shall think fit, which shall be paid to the Treasurer.
- 1 Inst. 730 " The Justices Mittimus to the house of Correction may be most safely *Mittimus.*  
" made upon this Statute, *Quia otiosa & inordinata persona*, for that he-  
" is an Idle and Disorderly person, or for that he is an Idle person, or that  
" he is a Disorderly person.

## Huy and Cry. CHAP. LIV. V. 28.

§. I.  
When and  
how to be  
made.

**H**uy and Cry, signifieth a pursuit of one or more that have committed Felony, and fly therefore.

Every Justice of Peace may cause Huy and Cry, fresh suit and search to be made, upon any Murther, Robbery, Theft, or other Felony committed: and this he may do by force of the Commission, the first *Assignarius*: Stat. *Winch.* 13 E. 1. cap. 1.

The party robbed, or some one of the company of one murdered or robbed, must speedily come to the Constable of the next Town, or to some other habitant dwelling near the place where the Felony was committed, and must give notice of the said Felony, and will him to raise Huy and Cry, or to make pursuit after the Felon: And the Constable must forthwith make search in his Town; and if the Felon be not there found, then to give notice to the next Towns, &c.

Note, That all Huy and Cries ought to be made immediately after notice given of the Felony done, from Town to Town, and from County to County, and by Horsemen and Footmen; otherwise it is no lawful pursuit. 28 Ed. 3. cap. 11. 1 E. 1. 1. 2.  
27 Eliz.  
31. p. 1. 5.

Note also, When Huy and Cry is levied upon any Robbery or other Felony, the Officer of the Town where the Felony was done (as also the Officer whence Huy and Cry shall be after levied) ought to send to every other Town round about him, and not to one next Town only: and in such cases it is needful to give notice in writing (to the pursuers) of the things stolen, and of the colour and marks thereof; as also to describe the person of the Felon, his Apparel and Horse, &c. and shew which way he is gone, if it may be.

Sir Nicholas Hide, in his Charge at Cambridge Assizes in Lent, 1622. delivered, That Huy and Cry must be made or pursued with Horse-men and Foot-men; and that not only a private search is to be made in every Town, but that they must raise the Countrey as they go, and all still to follow the Huy and Cry, as against a common Enemy. *Plus hic postea.*

Also the Officers of every Town to which Huy and Cry shall come, ought to search in all suspected houses and places within their limits: and as well the Officers, as all other persons which shall pursue the Huy and Cry, may attach and stay all such persons as in their search, or pursuit, they shall find to be suspicious; and thereupon shall carry them before some Justice of Peace of the County where they are taken, to be examined where they were at the time when the Felony was committed, &c.

See more of Huy and Cry in the Title *Robbery*, and *Felony*.

## Hunting. CHAP. LV. V. 29.

§. I.  
Hunting in  
Vizards.

**U**Pon Information given to any Justice of Peace of the County where any unlawful Hunting of Deer or Conies (by night, or with painted faces, or other disguising) in any Forest, Park, or Warren shall be had, of any person suspected thereof; that Justice may make a Warrant to the Sheriff, Constable, Bailiff, or other Officers, to take the party, and to bring him before him, or before any other Justice of Peace of the same County, who may examine him of that Hunting, and of the doers thereof: and if he

1 H. 7. c. 7.  
p. Just. 16.  
\* *Quest.* if  
they will  
nothing.  
Dy. fol. 50.  
pl. 5.

he conceal that Hunting, or any Offender with him therein, then the said Concealment shall be \* Felony in such Concealer. But if he then confess the truth of all that he shall be examined of, and knoweth in that behalf; then his Offence of Hunting shall be but Trespass, and fineable: The Fine to be assessed at the next General Sessions of the Peace, by the Justices there. See *Possea, tit. Felony by Statute.*

Also to disobey such a Warrant, or to make *Rescous* thereupon; so that the Execution of the same Warrant thereby be not had, is Felony. *Vide ut supra.*

"If any shall by night or day, unlawfully break or enter into any §. 2.  
"Park Impaled, or several Grounds closed with Wall, Pale, or Hedge, *Is Parks.*  
"and used for the keeping, breeding, and cherishing of Deer; and being  
"thereof convicted at the Suit of the Queen, or Party, shall be imprison-  
"ed three Moneths, and pay the party treble damages; and be bound  
"with Sureties to the Good Behavior for seven years, or else continue in  
"prison seven years, 5 *El. 21.*

"This Act extends not to Parks, or Inclosed Ground, then after to  
"be made and used for Deer, without the Grant or License of the Queen;  
"Her Heirs, Successors, or Progenitors. 5 *El. 21.*

"The Justices of the Peace in their Sessions, may hear and determine  
"the Offences of Taking, Hawking, Fishing, and Hunting against that  
"Statute; and the party may have his remedy before them there, and  
"may make out Process as well upon Indictments, as by Bill of Complaint,  
"Information, or any other Action. 5 *El. 21.*

"The party grieved, upon satisfaction to him made of his damages;  
"and upon Confession by the Offenders in open Sessions, may release the  
"Suretyship for the Good Behavior, at any time, within the seven years:  
"And if the party be bound, if he shall come in open Sessions, and con-  
"fess the Offence, and be sorry for it, and pay the party his treble  
"damages, may in the same, or any other Sessions, release the Recog-  
"nizance. 5 *El. 21.* But it seems, that no other Justices, but those, before  
"whom such Confession is made; can in the same, or any other Sessions,  
"release or discharge the Recognizance. And it seemeth also, if the party  
"lie in prison for want of Sureties, for the Good Behavior, after the three  
"Moneths; neither the party grieved, nor Justices upon Confession can  
"discharge him.

"And for as much as many Grounds used for the keeping of Deer,  
"were altered or inclosed since 5 *El. 21.* a Statute was made 3 *Jac. 13.*  
"with the same Provisions touching Deer, but pretended to the kill-  
"ing of Conies also; but the Statute of 3 *Jac. 13.* extends only to the  
"Killing, Hunting, and Chacing of Conies in the night, and not in the  
"day time; nor to any Park, or Inclosed Grounds, after to be used for  
"keeping Deer and Conies, without Grant.

§. 3.  
"No person shall Hawk, or with his Spaniels hunt in any Ground, *Hunting in*  
"where Corn or other Grain shall then grow (except in his own Ground) *Corn.*  
"at such time as any Eared or Coddled Corn or Grain, shall be standing;  
"nor before it be Cocked, Shocked, &c. Upon pain to forfeit for every  
"time he shall so Hawk or Hunt, without the consent of the owner,  
"Forty shillings to the owner: Which if he pay not within ten days after  
"conviction, he may be imprisoned a Moneth, without Bail, or may be  
"recorded by Action; and the Justices of Peace may hear and determine  
"the same in their Sessions: And every Justice of Peace may examine the  
"Offender, and bind him to the Sessions to answer the Offence, and to pay  
"the Penalties, and receive the punishment.

The



§. 4. The Justice of Peace that shall take the Examination of an Offender for unlawful Hunting in Parks, &c. as aforesaid, may after such Examination bind the Offender to his Good Behavior (as it seemeth) to the end he may be forth-coming, till the Offence and Residue of the Offenders be fully examined: Otherwise, if it shall after appear, that the Offender hath concealed any thing whereby the Offence becometh Felony, then the Offender perhaps will not be found.

Also all such unlawful Hunting, if it be by three or more, will prove a Riot. 1 Jac. c. 27.  
P. Pheasant. 7.

§. 5. *Grey-hound* Whosoever shall have or keep any Grey-hound or Setting-dog, (not having sufficient living according to this Statute;) or shall trace or course any Hare in the Snow, or otherwise destroy, kill, or take any Hare; the said Offences being proved, &c. before two Justices of Peace, the said Offenders shall be by them committed to the Gaol, &c. *Vide tit. Partridges*, more fully hereof.

And yet Hunting and Hawking, and such other pastimes, every man may use them upon his own Lands at his pleasure, so far as they be not restrained by Act of Parliament. But no man may make a Park or Warren within his own Ground, without the Kings Grant or License; and therefore such Park or Warren (made without License) seems not to be within the Statute of 1 H. 7. 7. See *Br. Warren* 1, 2. *Co. L.* 233. Co. II. 86,  
87. i

What a Park is, and the difference between a Park, a Forest, and a Chase, and what be Beasts or Fowls of Park, Chase, and Warren. *Vide Co. L.* 233.

There be divers other Statutes made against Hunting, &c. which be very penal, but not to be dealt withal by Justices of Peace, except at their General Sessions. See more of them *Hic posita, tit. Bailment, & Stat. 3 Jac. Regis, hic antea, tit. Guns.*

“If any shall hunt, destroy, and kill a Hare in the Snow, and being thereof convicted, shall forfeit six shillings eight pence for every one.” *14 H. 8. 10.*

§. 6. *Dist.* “If any person or persons shall unlawfully course, kill, hunt, or take away any Red or Fallow-Deer, in any Forest, Chase, Purlieu, Wood, Park, or other ground where Deer are, or usually have been kept, within England or Wales, without the consent of the Owner, or party chiefly trusted with the custody thereof, or be aiding or assisting therein, and shall be convicted thereof by Confession of the Party, or Oath of one or more credible Witnesses, before one or more Justices of the Peace, being prosecuted within six Moneths after the Offence done; shall forfeit for every such Offence Twenty pounds to be levied by Distress upon the Goods and Chattels of such Offenders; one moyety to the Informer, the other to the Owner of the Deer: And for want of Distress, the Offender to be committed to the House of Correction for six Moneths, and there put to hard labor, or to the Common Gaol for one whole year, at the discretion of the Justices before whom the Conviction shall be, and not be discharged from thence until sufficient Sureties be given for the Good Behavior, for one whole year next ensuing, after his or their enlargement. Provided, no Offender punished by this Act shall incur any penalty of any other Law for the same Offence.” 13 Car. 1.  
cap. 10.

§. 7. *Search.* “One Justice of Peace, by Warrant under his Hand and Seal, may Authorise any Game-keeper (which any Lord of a Mannor, of the degree of an Esquire, may appoint under his Hand and Seal) or any other person or persons, to search in the day time the Houses, Out-houses, and other places of persons thereby prohibited; as upon good ground shall

"shall be suspected to keep Guns, Bows, Grey-hounds, Setting-dogs, Ferrets, Coney-dogs, or other Dogs, to destroy Hares or Coneys, Hayes  
"Tramels, and other Nets, Lowbels, Hare-pipes, Snares, and other Engines; and them to seise and keep for the Lord of the Mannor, or to  
"destroy them. 22 & 23 Car. 2.

"All persons are thereby prohibited, except such as have Lands and §. 8.  
"Tenements, or some other Estate of Inheritance in his own or his Wives  
"Right, of One hundred pound *per annum*; or for term of Life, or have  
"Lease or Leases for Ninety nine year, or a longer term of One hundred  
"and fifty pound *per annum*, the Son and Heir of an Esquire, or other  
"person of higher degree. The Owners and Keepers of Forests, Parks,  
"Chaces, and Warrens, being stocked with Deer and Coneys for their  
"necessary use in respect thereof. 22 Car. 2.

22 & 23  
Car. 2.

"Any person that shall enter any Warren, or Ground used for the §. 9.  
"breeding and keeping of Coneys (although the same be not inclosed) *Warren.*  
"and there shall chase, take, or kill any Coneys, being convicted thereof  
"by his Confession, or by the Oath of one sufficient Witness, before any  
"Justice of Peace, within one Moneth after the Offence, shall pay to the  
"party grieved, treble damages and costs, and be imprisoned for three  
"Moneths, and after, till he find Sureties for the Good Behavior.

"If any person in the night time shall kill or take any Coneys upon  
"the Borders of any Warrens, or other Grounds, lawfully used for the  
"breeding or keeping of Coneys, except the owner or occupier of the  
"Soil, or other person employed by them, whereupon they are killed or  
"taken, and be thereof convicted as last aforesaid, shall give the party  
"such satisfaction, and within such time as shall be appointed by the Ju-  
"stice, before whom such conviction is, and shall pay to the Overseers  
"for the Poors use, such sum of Money, not exceeding ten shillings, as  
"the Justice shall think fit: And in default of such payment, such Ju-  
"stice may commit the party to the House of Correction, for such time,  
"as he shall think fit, not exceeding one Moneth. 22 & 23 Car. 2.

"Any person that shall be found or apprehended, setting, or using §. 10.  
"any Snares, Hare-pipes, or like Engines, and shall be thereof convicted as *Snares.*  
"aforesaid, shall be punished as in the said last clause is mentioned, 22 &  
"23 Car. 2.

"Any person grieved by any such Judgment, may appeal to the next  
"General Quarter Sessions, who shall give such relief as is agreeable to  
"that Act: Which Judgment shall be final, if no Title to any Land or  
"Royalty be concerned. 22 & 23 Car. 2.

"If any person having no Chace, Park, or Forest of their own, keep, §. 11.  
"nor cause to be kept any Nets, called Deer-hays, or Buck-stalls, by the  
"space of a Moneth after Proclamation made of that Statute, upon pain  
"to forfeit Forty pound a Moneth for keeping of them. 19 H. 7. c. 11.

"No person shall stalk or cause to be stalked, with Bush or Beasts to  
"any Deer in any Park, Chace, or Forest, or without (except in his own  
"Ground, Park, Chace, or Forest) without License of the Owner, Master,  
"or Keeper, or forfeit for every time Forty pound.

"Two Justices of Peace in their Sessions may call the person suspect-  
"ed before him, and examine them; and if upon Examination the party  
"be found in Default, then to commit him to prison, till he find Sureties  
"to pay the Fine; and these Justices that examine him, shall have the  
"Tenth part of the Forfeiture for their labor. 9 H. 7. c. 11.

holder.

## Inholder. CHAP. LVI.

§. 1. *Horf-bread.* **N**O Hostler or Inholder shall make his Horf-bread within his <sup>21 Jac. 21.</sup> Hostery, but Bakers shall make it; and the Assize shall be kept, and the weight be reasonable, after the price of Corn in the Market adjoining; and they shall sell their Horf-bread, Hay, Oats, Beans, Pease, Provender, and all kind of Victuals, both for Man and Beasts, at reasonable gain, having respect to what the same shall be sold for in the Market adjoining, without taking any thing for Litter.

"If an Inholder live in a Town or Village, which is no City, Town- <sup>Ibid.</sup> Corporate, or Market Town; yet being a thorow-fare, and common passage, and no Baker dwelling there, he may make Horf-bread in his house of lawful assize and price.

§. 2. *Penalty.* Justices of Peace (amongst others) may hear and determine Offences <sup>Ibid.</sup> against this Act; and the party offending shall be fined according to his Offence, and being once convicted; for the second Offence he shall suffer imprisonment for a Moneth, without Bail; and for the third Offence, shall be set upon the Pillory, without being redeemed for Money. And if after such Judgment of Pillory, he shall offend again, he shall be fore-judged of keeping an Inn any more, where Inholders are within the Statutes of Ale-houses and Tipling. See *tit. Ale-houses.*

"Every Man that will, may erect an Inn, that can and will; for it is not a Franchise, as was resolved in Parliament. 20 Jac. Rolls Abridgment. part 12. p. 84.

## Inrolment. CHAP. LVII. V. 30.

§. 1. **A**Ny one Justice of Peace may joyn with the Clerk of the Peace, in <sup>27 H. 8. 16.</sup> taking the Inrolment of any Indenture of Bargain and Sale of Lands, &c. lying in that County where he is Justice, and it is good.

*Thus.* Now the said Justice of Peace, and the Clerk of the Peace, are to take for the Inrolling of the same Deed Indented in Parchment, &c. These Fees following, *viz.* where the Lands exceed not the yearly value of Forty shillings, they are to take Two shillings, *scil.* Twelve pence for the Justice, and Twelve pence for the Clerk. And where the Lands exceed the yearly value of Forty shillings, there they are to take Five shillings, *scil.* Two shillings six pence for the Justice, and Two shillings six pence for the Clerk. *Ibid.*

But such Deed (and all other Deeds, to be Inrolled according to this Statute) must be indented *revera*, and must be Inrolled within six Moneths after the date of the same Indenture: And if it have no date, then within six Moneths after the delivery of the Deed; or if it be inrolled the very day of the date of the Deed, or the very last day of the six Moneths, it is sufficient. <sup>Co. 5. 20b  
Co. 4. 1. b  
Dallison.  
4 Eliz.  
Dyer 21b</sup>

§. 2. *Computati- on.* Note, herein you must account Twenty eight days to every Moneth, and not above, (*scil.* Four weeks to the Moneth.)

Note also the difference when a Statute accounteth by the year, half <sup>Co. 6. 6b</sup> year, or quarter, and when by the moneth; for a year, half a year, or a quarter of a year, shall be accounted according to the Kalender, and by the days in the Kalender, and not after Twenty eight days to the Moneth.

And



And a year, or a Twelve-moneth (in the singular number) includes the whole year according to the Kalender. But Twelve-moneths (in the plural number) or Eight moneths, or Six \* moneths, &c. shall be accounted after Twenty eight days to every Moneth: For the Moneth, by the Common Law of England, is but Eight and twenty days. And so,

Whereas { Three Moneths }  
          { Six Moneths } hath but { 84 } days.  
          { Twelve Moneths } { 168 }  
  { 336 }

The { Quarter of a Year }  
      { Half-year } hath { 91 } days.  
      { Year } { 182 }  
  { 365 }

Dier 345.

*Ter centum, ter viginti, cum quinque diebus,  
Sex horas, neque plus integer annus habet.*

And as to these Six hours, the Law giveth no regard to them; and yet these Six hours every fourth Year do make a day, and so make the Leap Year, and this Leap Year containeth in it Three hundred sixty and six days.

Note also for the Year, That the Julian Year (instituted by Julius Caesar) beginneth the First day of January, 'and so doth the Empire begin; the Hebrews, the First of April; the Church of Rome on their Twenty fifth of December: But in all Matters legal with us, the Year beginneth not till the Twenty fifth day of March. And therefore when in an Indictment, or other Writing, or Deed, it shall be set down, (or the Writing shall be dated *Anno Dom. 1617.*) it must be accounted according to the computation of the Church of England, which beginneth the Year upon the Twenty fifth day of March; upon which day our Saviour Christ Jesus arose from death, as it is holden, Dr. Whites Def. 151. and upon which day Christ was conceived in the Virgins Womb, (as some write) 'and so 'was born in December; and then the year of our Lord must be accounted rather from his Conception, and Incarnation, then his Nativity' and upon which day the World, Adam our first Father, was created, as it is holden by others: But I leave these things to such as have travelled in the searching out of Antiquities. See the History of Venice, pag. 4 & 5.

### Laborers. CHAP. LXVIII. V. 31.

5 Eliz. c. 4.

Every Justice of Peace, upon request, may cause all such Artificers and other persons as be meet to Labor, (by his discretion) to work by the day in Hay time, and Harvest time, for the saving of Corn and Hay, and may upon their refusal, imprison them in the Stocks, by the space of two days and one night: "And if the Justice neglect so to do, he shall forfeit Forty shillings." §. 1. One Justice

5 Eliz. c. 4.

Any one Justice of Peace may give License under his Hand and Seal, to such Laborers as pass in Hay Harvest, and Corn Harvest, from one Countrey to another to work. Apprentice

5 Eliz. c. 4.

Any one Justice of Peace (upon complaint to him made) may compel any person meet, (in his discretion) to be bound as an Appentice, with any one that shall require him to Husbandry, or any other Art, &c. And upon their §. 2.

their refusal may commit them to Ward, there to remain until they will be bound to serve as an Apprentice should serve, according to the Statute. "No person shall be compelled to be an Apprentice, unless he be under Twenty one years of age.

"Apprentice, signifieth one that is bound by Covenant in writing, Indented to serve another Man of Trade, for certain years, and that his Master shall, in the mean time, endeavor to instruct him in his Art or Trade. The usual Covenants for Apprentices, see Cap. 128. And note, that in such and all other Covenants, *Conventio legem vincit*.

"Every person being a Housholder, and using half a Plough-land, at least, make take an Apprentice above Ten years of age, and under Eighteen to serve in Husbandry. 5 Eliz. 4.

"Every Housholder dwelling in any City, Borough, or Town Corporate, and exercising any Art, Mystery, or Manual occupation, may retain the Son of a Freeman not occupying Husbandry; nor being a Laborer, and inhabiting in the same, or in any other City, &c. To serve and be bound as an Apprentice for seven years, at least; so as the term expire not before the Apprentice be Twenty four years old, but in Market Towns not Corporate, they may take the Child of an Artificer. 5 Eliz. 4.

"No Merchant, Mercer, Draper, Goldsmith, Ironmonger, Imbroiderer, or Clothier, dwelling in a Corporate Town, may take any Apprentice, except the Apprentice or Father have Freehold Lands to the value of Forty pounds *per annum*, &c. But if such Master live in a Market Town not Corporate, his Apprentice, or his Friends, must have Three pound *per annum* in Freehold. 5 Eliz. 4.

"But these Artificers, *viz.* Smiths, Wheelwrights, &c. may take such Children Apprentices, whose Parents may dispend no Lands. 5 Eliz. 4.

"Every Clothworker, Fuller, Shearman, Weaver, Tailor, and Shoemaker, that keep three Apprentices, shall keep one Journey-man; and for every Apprentice above three, shall keep one Journey-man, upon pain of Ten pounds for every Default. 5 Eliz. 4.

s. 3.  
*Misuser.*

If any Master shall misuse his Apprentice, or that the said Apprentice shall have just cause to complain, or if the Apprentice do not his duty to his Master, upon complaint thereof made by the Master, or Apprentice being grieved, to any one Justice of Peace of the County where such Master dwelleth, the said Justice (by his discretion) shall take order between the said Master and his Apprentice; and for want of Conformity in the Master, the said Justice may bind him to appear at the next Sessions to be holden in the said County; where the Justices of Peace, or four of them, whereof one of them to be of the *Quorum*, if they shall think meet, may discharge the said Apprentice of his Apprentiship, and Indentures. But if there shall be Default in the Apprentice; the said Justices (at their said Sessions) may cause due correction to be ministred to him, as they shall think meet. Also it seemeth, That if the first Justice of Peace, to whom complaint was made, shall find the Default to be in the Apprentice, that then the said Justice of Peace may send him to the House of Correction, as an idle or disorderly person, by the Statute of 7 Jac. c. 4. And needeth not to trouble the Sessions with him, *tamen quare*. But from the Sessions they may send him to the House of Correction. 7 Jac. c. 4.

"It seemeth by this Clause, that for ill usage of the Master towards the Apprentice, upon complaint by the Apprentice in the manner directed by the Act, the Justices may discharge the Apprentice from the Masters service, and not *à converso*, but only that, for miscarriage of the

"the Apprentice, he may be corporally punished; and this I remember came in question in the *Kings Bench*, when *Hales* was Lord Chief Justice there; and he and the Court seemed to hold accordingly, but said, some things and questions were better sleep, then be stirred: By which he discovered his opinion, but nothing more came thereof.

'If an Apprentice shall steal or purloyn any thing not delivered him to keep, above the value of Twelve pence from his Master, the Apprentice, together with those that inticed or perswaded him thereto, or shall receive any of the same Goods, knowing they were purloyned, after due examination and confession or proof thereof made before any Justice of Peace, He may send the Apprentice, as also the inticers, procurers, and receivers of those Goods, to the Common Gaol, &c. But if the Goods be not above the value of Twelve pence, it seemeth the Apprentice, together with the Procurers and Receivers, may be sent to the House of Correction by the Justice of Peace, or rather by the Justices at their General Sessions.

§ El. 4. 'No Master, Mistres, or Dame, shall put away any servant before the end of their term, unless it be for some reasonable cause, to be allowed by a Justice of Peace, &c. Nor shall put away any servant at the end of the term, without one Quarters warning given before two sufficient witnesses, &c. § El. 4. And the proof of the sufficiency or insufficiency of the cause of putting away of a servant, shall be made at the Quarter Sessions, &c. *Ut postea*. "Nor may the servant depart before the end of his term, nor at the end of his term, without a quarters warning.

§ El. 4. Any one Justice of Peace may allow of the cause of putting away of a servant, or of the departure of a servant within his term.

§ El. 4. But otherwise it is of an Apprentice, for an Apprentice cannot be discharged but by Four Justices of Peace at the least, and in open Sessions as aforesaid; or else by the agreement of the Master and the Apprentice, and under his Masters hand in writing. And yet one that is retained as an Apprentice, may be seised by his Lord as a Ward, by reason the Lords Title is more ancient.

§ El. 4. Any two Justices of Peace upon complaint to them made, that any servant (who is retained according to the Statute of 5 Eliz.) hath departed before the end of his term, (unless it be for sufficient cause to be allowed by one Justice of Peace, at the least) or at end of his term, without one Quarters warning given before two Witnesses; or that any person compellable by the Statute to serve in Husbandry, or in any other Sciences in the said Statute named, upon request made, hath refused to serve for the Wages appointed (by Proclamation in that County, &c. according to this Statute;) or hath Promised, or Covenanted to serve, and doth not according to the Tenor of the same, the said Justices may examine the matter; and if they shall find such servant or person faulty therein, they may commit him to Ward, there to remain without Bail until he shall be bound to the party offended, to serve and continue with him for the Wages limited according to this Statute, and then to be discharged without paying any Fee to the Gaoler.

And yet any one Justice of Peace (as it seemeth) may make his Warrant to attach his servant departed out of service, or refusing to serve, to be before the Justices at their Sessions, there to answer their defaults. See *Postea tit. Warrants*.

Also it seemeth, that any one Justice of Peace may send such idle or disorderly



disorderly Servants to the House of Correction, and that by the Statute of 7 Jac. cap. 4.

§. 6.  
who com-  
pellable to  
serve.

Now by the Statute of 5 Eliz. every person unmarried, and every other person (married) being under the age of thirty years, having been brought up in any of the Arts, Sciences, or Trades in the Statute mentioned, is compellable to serve in any the said Trades, upon request made by any person using the same Trade, except such persons be lawfully retained with some other; or have 40 s. in Land, &c. or 40 l. in Goods, and so allowed by two Justices of Peace, under their Hands and Seals; or have some Farm in Tillage, whereupon to employ themselves, "or be retained with any other person in Husbandry, or in any the same Arts, or any other Art, nor retained or in office with any Nobleman or Gentleman." 5 Eliz. 4.  
P. 2.

Also every person between the age of Twelve years and threescore (not being lawfully retained according to the Statute, nor being a Gentleman born, nor a Scholar; nor having means of 40 s. per annum, or in Goods 10 l. as aforesaid; nor Parents living, having x l. in Lands, or 40 l. in Goods, and being their Heir apparent) shall be compellable to serve in Husbandry by the year, upon request, &c. See more what persons be compellable to serve, *Hic postea*.

§. 7.  
wages.

As for Servants Wages generally, they are grown so excessive at this day (in many Countreys) that the poor Farmers are thereby much disabled; for remedy wherein, the Justice of Peace shall do well to take it into better consideration, and give remedy. P. Justices  
& Lamb.  
4.

Any two Justices of Peace may imprison without Bail the Master for Ten days, and the Servant, Work-man, or Laborer, for Twenty one days, that shall give, or shall take or receive excessive Wages, *scil.* Any greater Wages, or other commodity, contrary to the Rates or Wages assessed by the Justices of Peace at their Easter General Sessions; and Proclamation thereof made in that County. "And all Retainers promise gift or payment, and every Writing, or within six weeks after." 5 Eliz. 3.

"Now concerning the Wages of Servants, &c. The Justices of Peace (at every their Easter Quarter Sessions) shall do well to call some grave and discreet persons of that County, and they together respecting the plenty, or scarcity of the time, and other necessary circumstances, to assess the Wages as well of Servants, as of all Artificers, Handicrafts-men, and Laborers, &c. according to the Statute, at their discretions (and yet they to assess the Wages in such manner, as that Servants, &c. may reasonably maintain themselves therewith: And that their Masters should in no wise exceed or give above such Wages, by way of Contract: But yet Masters may reward a well-deserving Servant, &c. (over and above his Wages) according as he shall deserve; so that it be not by way of promise, or agreement, upon his Retainer. See the Preamble of the Statute 5 Eliz. 4. that considering the advancement of prices of all things belonging to Servants and Laborers, if more reasonable Wages and Allowances be given them than is limited by former Statutes, it would be too great a grief and burden to the poor hired Servants and Laborers.

"Of which Rates, Proclamation shall be made, and the Justices may every year alter and reform the same, as in their discretions shall seem meet. And every Justice of Peace shall be present at the Taxing such Wages, unless reasonable cause of his absence upon Oath, to be allowed by the said Justices, or forfeit 10 l.

"By the Law of God, Thou shalt not oppress an hired Servant, that is needy and poor; but thou shalt give him his hire speedily, for therewith he sustaineth his life. Deut. 24. 14, 15.

And

‘And the hire of the Laborer kept back, crieth and entreth into the ears of the Lord. Jam. 5. 4.

Note, that every Retainer, promise or payment of Wages, or other thing whatsoever, contrary to the true meaning of this Statute, and every Writing or Bond made for that purpose, shall be utterly void.

5 Eliz. 3. ‘Also, any two Justices of Peace may imprison without Bail, the Master, that by any means, shall retain or keep any Servant, Workman, or Laborer, contrary to the Statute, *sc.* For retaining or hiring” a Servant <sup>§. 8. Retainer for one year.</sup> for less time than one whole year. But this seemeth to extend to Artificers or Tradesmen, and only to such Trades as are named in this Statute, and not to Husbandry. See *hic postea R.*

The Arts and Trades mentioned in the Statute of 5 Eliz. are these following, *viz.* Arrow-head-makers, Bakers, Brewers, Butchers, Bowyers, Cappers, Clothiers, Cloth-workers, Cooks, Cutlers, Curriers, Dyers, Ferriers, Felt-makers, Fletchers, Fullers, Glovers, Hat-makers, Hosiers, Millers, Pewterers, Sadlers, Shearmen, Shoo-makers, Smiths, Spurriers, Tailors, Tanners, Tuckers, Turners, and Woollen-cloth-weavers.

‘And yet no Retainer of any Servant for less time than for one whole year is good, or according to Law. See *Fitz. 168. b. Co. L. 42. b.*

5 Eliz. 4. Any two Justices of Peace of the County where the offence hereunder mentioned shall be committed, may imprison by the space of one year or less, by their discretions, any such Servant, Workman, or Laborer, as shall wilfully make any assault or affray upon his Master, or upon any other having the charge or oversight of him, or of his work, the said offence being proved before the said Justices by Confession of the said Servant, &c. or by the Oath of two honest Men. <sup>§. 9. Assault his Master.</sup>

And yet upon complaint thereof made to any one Justice of Peace, that Justice may bind the Offender to his Good Behavior, and so to the next Sessions, and there the Offender may be convicted and punished according to the Statute.

5 Eliz. 4. Any two Justices of Peace may compel any Woman (being of the age <sup>women.</sup> of Twelve years, and under Forty, and unmarried, and forth of service) whom they shall think meet to serve, to be retained in service, by the year, week, or day, for such wages, and in such sort as they shall think it meet: And if such a Woman shall refuse, they may commit her to Ward, until she shall be bound to serve as is aforesaid.

‘Also by the Orders from the Kings Majesty imprinted Anno 1630. p. 10. & 18. & Order 1. It appeareth, That for the better execution of the Laws and Statutes in force, the Justices of Peace at their Monethly Meeting, shall (amongst other things) inquire of all such idle persons, who being able of body to work, do nevertheless refuse to labor: And there (*Direct. 9.*) direction is given, That if in any Parish there be found any persons that live out of service, or that live idly, and will not work for reasonable Wages, or live to spend that they have at the Alehouse, those persons to be brought by the High Constables, and Petty Constables to the Justices at their said Monethly Meeting, there to be ordered and punished. *Vide plus Stat. 5 Eliz. hic antea & Br. 14. who are compellable to serve, &c. Hic postea & titulo Poor.*

Any two Justices of Peace may make a Testimonial to a Serving-man <sup>Testimonial</sup> that is turned away from his Master, or whose Master is dead, 14 Eliz. c. 5. *Quere*, If this be still in force. *Lamb. 326.*

1 Jac. 6. For Clothiers which will not pay their Workmen such Wages as shall <sup>Clothiers.</sup> be assessed by the Justices at their Sessions. See the Title of *Cloth.*

§. 10.  
Three Ju-  
stices Cer-  
tificate.

The Certificate which is to be made to the Head-officer of any City <sup>5 Eliz. 4.</sup> or Town Corporate, where a Child is to be bound Appentice, (*scil.* That the Father of such Child may dispend Forty shillings *per annum*) must be under the Hands and Seals of three Justices of the Peace of the Shire, where the Land lieth.

The Reason of this Law seemeth to be, for that such as be to be bound Apprentices in Corporate Towns, &c. if their Parents be of a competent livelihood, then their Masters shall not only be the better secured, &c. But such Apprentices also in likelihood, shall have the better means to set up their Trades after their time expired. And concerning such, whose Parents have not Forty shillings *per annum*, they are fitter to be bound Apprentices to Husbandry, &c. in the Country.

But concerning this Certificate, it seemeth not much in use at this day; neither is this Certificate so of the substance of the matter, or so material, that for want thereof, the Indentures for the binding of such an Apprentice shall be void, (for the Justices of Peace cannot be compelled to certify) &c. but if the Parents have Forty shillings *per annum*, it sufficeth: And so were the opinions of Sir Humphrey Winch, and Sir William Jones, in the Court of *Common Pleas*, *Termine Pasch.* 21 *Jac. Regis.* But Sir Henry Hobart, Lord Chief Justice of the *Common Pleas*, did not then deliver his opinion therein directly; yet he seemed to me to hold, That the Parents of such an Apprentice ought to have Forty shillings *per annum*, and also ought to procure such a Certificate from the Justices of Peace.

Here I think it not amiss to set down certain Cases, some of them being by way of Exposition of this Statute <sup>5 Eliz. cap. 4.</sup> And other some at the Common Law, or grounded upon former Statutes; yet such as may give light and help to our Justices of Peace in this business.

§. 11.  
Trades,  
what law-  
ful.

First, By the Common Law, no Man may be prohibited to work in any lawful Trade, for the Law abhorreth idleness, as the mother of all evil. Co. 11. 99

A Man cannot be restrained to use the Trade of making Dice, Cards, Co. 11. 8 Bowls, or the like, (except it be by Parliament) for all Trades, which do avoid idleness, and exercise Men in labor for the maintenance of them and their Families, and for to increase their substance, and to serve the King, when need shall be, are profitable for the Commonwealth; and therefore the restraining of them is against the Law, &c. Co. 11. 86.

"So necessary are Trades to a Kingdom, That if a Man be bound not to use a Trade that he hath been brought up in generally, that Bond is void: But a Man may bind himself not to use a Trade in a particular Town or Parish.

Also by the Common Law no Man is prohibited to use divers Mysteries Co. 11. 9 or Trades at his pleasure: And although this was prohibited by the Statute of 37 *Ed. 3. cap. 6.* yet presently at the next Parliament (that restraint of Free-trade being found prejudicial to the Commonwealth) it was Enacted again, That all persons should be as free as they were at any time before the said Statute, Co. 11. 54. See the Statute of 38 *Ed. 3. cap. 2.*

For that without an Act of Parliament, no Man may be restrained in Ibid. any manner, either to work in any lawful Trade, or to use divers Mysteries, or Trades; therefore Ordinances made to restrain any person therein are against the Law: And yet Ordinances made for the good Order and Government of Tradesmen, &c. are good. Co. ibid.

Apprentices  
seven years.

None shall use any Art, Mystery, Craft, Trade, or Occupation, except he hath been brought up therein seven years as Apprentice, <sup>5 Eliz. 5.</sup> By 15 *Car. 2. cap. 15.* "Hempdressers, and making Cloth of Hemps, and Nets, "and Tapistry is excepted.

"Those



12 Car. 2. c. 16. "Those persons, who on the Twenty fifth day of April, 1661. were  
 "in the Actual Service under the command of *George Duke of Albemarle*,  
 "and have not since deserted the Service, or refused to take the Oaths of  
 "Supremacy and Allegiance, that did heretofore use any Trade, but did  
 "not serve out their time, or are apt and able to practice any Trade, may  
 "set up any Trade to which they were Apprentices, as if they had served  
 "out their time; or if they were never Apprentices, may set up such  
 "Trades as they are apt and able for, in the places where they were born,  
 "without any let or molestation, in respect of using such Trade. And if  
 "they shall be sued or indicted in any Court, for so doing, they making  
 "it appear they were so in Service, and have not since deserted, and have  
 "taken the said Oaths; and upon *Not guilty*, shall be found *Not guilty*; and the  
 "person who so sued or indicted them, and shall have a Verdict pass against  
 "them; or so Nonsuit or discontinue, shall pay double Costs, to be reco-  
 "vered, as other Costs are to be recovered at Law.

"Such Officer or Soldier shall prove his Service, by Certificate under  
 "the Hand and Seal of some Field-Officer, and two Commission-Officers  
 "of the Regiment, or some General-Officer of the Army, which shall  
 "be proved by one Witness; or in default of such Certificate, by two  
 "Witnesses.

Co. II. 54. And yet it is lawful for any person to use privately any Trade (as of a  
 Cook, Brewer, Baker, or Taylor, &c.) in his own house, or in the house  
 of any other, for the private use of the Family, although such person were  
 never Apprentice to the Trade, *Co. ibid.*

If a Man use the Trade of Tallow-Chaundler, Baker, Brewer, or any  
 other lawful Trade, or Manual Occupation, for his own use, or for the  
 use of his Family, without selling any for lucre and gain, he may lawfully  
 do it, *Co. 8. 129, 130.*

But yet he which useth any Trade, or other Manual Occupation,  
 for the use of himself, or of his Family only (without selling) he can-  
 not retain any Apprentice within the Statute of 5 *Eliz.* *Co. 8. 129.* But  
 he may hire one to be his Servant, who is skilful in that Trade or Oc-  
 cupation.

One purchased a Mill, and hired a Miller to be his Servant, who  
 grownd the Grist of his Neighbors, and the Wife of the Owner of the  
 Mill took Money of the Neighbors for their Grist so grownd; and  
 for this the Husband (who was Owner of the Mill) was indicted at  
*Cambridge Summer Assizes, An. Dom. 1619.* by reason that he was never  
 himself Apprentice to the Trade. It was the Case of *T. P. Yeoman.*

The intent of this Statute 5 *Eliz. cap. 4.* was, That no person should  
 take upon them any Art, Mystery, or Trade, &c. But such wherein they  
 had skill and knowledge, according to the Rule, *Quod quisque norit, in hoc*  
*se exerceat, Co. 8. 130.*

And therefore none may keep a Common Brew-house, Bake-house,  
 Cooks-shop, &c. to sell to others, except they have been Apprentices  
 thereto by the space of Seven years, &c. *ibid.*

Cromp.  
185.

Note, That these words, Mystery, Trade, and Craft, do all bear one  
 sense or signification. See *Plow. 537 b. Co. 11. 54.*

Note next, that this Statute, 5 *Eliz. cap. 4.* extended not to Serving-  
 men, but to Servants in Husbandry, and Handy-crafts: And yet where the  
 words of any Statute be, Servant, in general, there it seemeth to extend  
 to all.

"Any employment that requireth no extraordinary skill to exercise it,  
 "is not within this Statute; and it hath been adjudged and affirmed in a

"Writ of Error, that a Pippin-Monger is not within this Statute, for it requireth no skill to use it; so Ploughing or Digging is not within it: For in those Trades strength is more required then skill. *Quere*, Of *Upholsterers. Rolls 2 part. Rep. p. 10. to the King against Tollin.*

"Every one bound an Apprentice according to that Statute, although under age, yet is compellable to serve his time out, as if he were of full age, when he was bound, 5 *Eliz.* 4. But that is to be understood of a Compulsion, by the means prescribed by that Statute; for the Covenant is not good, so as to inable the Master to bring an Action upon it, as was resolved. *H. 5 Car. 1. Cro. p. 129. Gilbert vers. Fletcher.*

§. 12. An Apprentice must be retained by Indenture, and by the name of *Crompt. 184. p. 15.*  
 who be an Apprentice expressly; or else he is no Apprentice, though he be compellable to serve. bound.

Who are compellable to serve, see in this Title before and after.

'Every Justice of Peace (as also the Constable) in the time of Hay, 5 *El.* 4. or Corn Harvest, upon request shall, and may cause all such Artificers, and persons as be meet to labor, by their discretion, to serve by the day for the Mowing, Reaping, Shearing, Getting, or Inning of Corn, and Hay, according to their skill and quality of the person; and may set the the refusers in the Stocks by the space of two days and one night.

Every Justice of Peace may command vagrant persons to prison, if *Fitz. 168.* they will not serve.

Every person who hath not sufficient Lands to occupy, or live upon, *Fitz. 178. 168. 1.* nor other Art, is compellable to serve. See *Br. 14.*

If an Infant, Man, or Woman, of Twelve years of age, or a Gentleman, Chaplain, Carpenter, or other person which is not compellable to serve; yet if they shall make a Covenant to serve in Husbandry, they shall be bound by their Covenant, and are punishable, if they then shall depart, &c. *Fitz. 168. d. c. P. 3. 14. Br. Ley. 67.*

Yet by the Common Law such a Covenant or Retainer of an Infant under Twelve years of age was void, they neither having ability of body, nor years to consent: For an Infant (by the Common Law) is not of age to bind it self by Covenant, *Ante annos nobiles*, which is Twelve years in a Woman, and Fourteen years in a Man-child. *Co. 7. 43. & 9. 72.* Neither before that age are they accounted, *Potens in corpore*, which were the words used in the Statute made 23 *E. 3.* though those words are now left out of the Statute of 5 *Eliz.* And thereupon *Markham* in 21 *H. 6.* and *M. Br.* abridging that Case, seem to hold Fourteen years to be the age for Retainer of an Infant, but there the Case was of a Man-child that was retained. *7 A. 4. 5. 2 H. 4. 18. Br. 19. 20. 21 H. 6. 32. Br. 30.*

But now by the Statute of 5 *Eliz. cap. 4.* any person above the age of Ten years, by their own Consent and Agreement, may by Indenture be bound as an Apprentice to Husbandry, or any other Trade or Art. *P. 15. 35.*

Also some of Twelve years of age by the same Statute, is compellable by the Justice to serve in Husbandry: So also it seemeth of other Trades, Arts, or Occupations. *P. 3. 22. 23.*

Such Children, whose Parents are not able to maintain them, though they be under Twelve, yet, if they be under Twelve, may they be bound Apprentice by the Overseers of the Poor, with the assent of any two Justices of Peace, by the Statute of 43 *El. cap. 2.* See *Postea tit. Poor.*

If a Child use Husbandry till the age of Twelve years, and after be made an Apprentice to any Mystery, his Covenant shall be void. But this Statute of *R. 7.* seemeth to be repealed by the general words of 5 *El. 4.* *12 R. 1. 6. 5. P. 15.*  
 See 1 *Jac. 25.*

'And

‘And now though such Child hath used Husbandry till his age of Twelve years, yet if he be not bound as an Apprentice to Husbandry, (and that his Parents be not able to maintain him) then it seemeth, that the Overseers for the Poor, by the assent of the Justices, may bind as an Apprentice such a Child, according to the Statute 43 *Eliz. cap. 2.* and that by force of the said Statute, *P. tit. Poor, 25.* And any person to whom the Overseers shall so bind such an Apprentice, may take, and keep him as his Apprentice, &c. 1 *Jac. 25.* & 21 *Jac. 28.*

2 H. 4. l. 13  
Br. 18.  
Fitz. 168 a

If a Woman, who is a Servant, shall marry, yet she must serve out her time, and her Husband cannot take her out of her M. service.

A married Man and his Wife do bind themselves to serve, they shall be compelled to serve according to their Covenant or Agreement, *Fitz. 168.*

‘One under the age of Thirty years, and brought up in Husbandry; or a Maid-servant brought up in any of the Trades mentioned in the Statute of 5 *Eliz. 4.* and not inabled to live (according to that Statute) at his or her own hands, such persons living out of service; and not having visible means of their own to maintain themselves without their labor, and refusing to serve as an hired Servant by the year, may be bound over to the next Sessions, or Assizes, and to be of Good Behavior in the mean time; or may be sent to the House of Correction, *Dir. 17.*

But a Man that holdeth Land of his Lord, to do certain days works yearly, shall not be compelled to serve. 40 *E. 3. 39.* *Crompt. 185.*

A Servant may be compelled to serve in Summer, in the place where he served in the Winter before. But this seemeth to have been only by force of the Statute made 25 *E. 3. cap. 4.* which Statute now standeth repealed by the Statute made 5 *Eliz. cap. 4.*

Fitz. 168 b

If a Man who is not able nor sufficient to keep a Servant, shall retain a Servant, such Retainer is void, *Br. 25.*

If a Man retaineth a Laborer or Servant, to serve him according to the Statute, though no Wages be spoken of upon the Retainer, yet the Retainer is good, and they shall have such Wages as are assessed and appointed by Proclamation, for that Wages are certain. See to this purpose the Book, 3 *H. 6. fol. 23.* *Br. 1.* §. 13.  
What Retainer is good.

If a Man retaineth another, except the Retainer be according to the Statute, it seemeth to be void; without it be by Indenture, and then being by Deed, he is bound by his Covenant. See *Fitz. N. B. f. 168.*

If a Man retaineth upon Condition, it seemeth to be a good Retainer. See 11 *H. 4. 42.* *Br. 23.*

A Man retaineth a Servant to serve him, generally, not expressing in what Office, or in what Business (as to say to serve him in Husbandry, or in the Office of a Cook, Butler, or Horse-keeper, &c.) yet such Retainer seemeth to be good, 21 *H. 6. 9.* *Br. Labor. 29.*

A Man is retained to serve during his life, it seemeth a good Retainer, *Br. 44.* 2 *H. 4. fol. 15.* And so for three years or more, *Fitz. 168.*

A Man is retained for one year, to serve at any time when he shall be thereto required; this is no good Retainer. See 23 *Hen. 6. 30.* *Br. 31.*

Fitz. 168 b.  
P. 1.  
C. L. 42. b.

Retainer of a Servant generally, without expressing any certain term, shall be for one year (in construction of Law) for that Retainer is according to Law. “And this is now by 5 *Eliz. cap. 4.* made void, unless it be “for a year, to certain Trades therein named.

A. retaineth a Servant for Forty days, and after B. retaineth the same Servant



Servant for one year : The first Retainer by *A.* is defeated and become void. *Br.* 51. See 11 *H. 6. 1.* *Br.* 49. Fitz. 169.4

Yet the Retainer of a Servant for a week, or for so long as the Servant or Master shall like, is a good Retainer. *Co. Instit. tit. Laborer.*

If a Servant, who is retained, shall depart out of his service, and wander, he may be compelled to serve another Man; but yet the first Master may take him away again. See *Br. Notice*, 2. 4. And besides, it is safe to get the consent of his first Master, for now by the Statute, 5 *Eliz. c. 4* the Master retaining a Servant that is departed out of Service, without shewing before his Retainer, a Testimonial, shall forfeit Five pounds. Fitz. 168.5  
P. 8.

A Man that retaineth a Servant, ought to take notice of every former Retainer within the same County; otherwise it is of a Retainer in another County, 17 *E. 4. fol. 7.* *Br. Notice* 20.

And yet Mr. *Fitzb.* opinion was, That if one retaineth another Mans Servant (generally) not knowing that he was another Mans hired Servant, he was not punishable therefore, except he should detain him after notice thereof, but now the Master may and must take notice whether he hath a Testimonial, or no (as it seemeth.) Fitz. 168.5  
Br. 7. 29.  
33.  
Dr. St. 149.

§. 14.  
Departure  
of a Ser-  
vant.

If one taketh an Infant, or other Servant out of another Mans Service, this is punishable, though the Infant or Servant was not retained; but if an Infant being retained as an Apprentice or Servant, fall to be a Ward, the Lord may take him from his Master, for the Lords title is more ancient; yet here it seemeth the Lord ought first to give notice thereof to his Master, 50 *E. 3. 22.* *Br. Labor.* 17. See *Br. Notice* 24. Fitz. 193d  
Fitz. 142.  
J.  
Plow. 153.

If a Servant or Apprentice depart and flee into another County, the Justices of Peace may issue out *Capias* against him into the County or place, whither he is fled; and being taken thereon, shall be imprisoned till he give Surety to serve as he ought. 5 *Eliz. 4.*

If a Servant depart, and be retained without a Testimonial, he departing shall be imprisoned until he procure it; and if he procure it not, within Twenty days, he shall be used as a Vagabond; and the person that Retains him without such Testimonial shewed, shall forfeit Five pound. And if any person be taken with a counterfeit Testimonial, he shall be whipped as a Vagabond. 5 El. 4.

Note, that by the Retainer, the Servant is in service presently by Law, although he cometh not into his Masters service indeed, 41 *E. 3. 20.* 46 *E. 3. 4.* 47 *E. 3. 14.* *Br. 9. 11.*

If a Servant shall depart from his Master, his Master may take him again, and retain and keep him whether he will, or no. See the title *Surety for the Peace.* And the Constable may take and bring such Servant to his Master again, *Fitz. Labor.* 56. Fitz. 168.  
P.

Any Artificer or Laborer that shall take any piece of Work in Great, in Task, or in Gross, or that shall take on him to make or finish such Work, shall not depart from the same (unless it be for non-payment of his Wages, or Hire, or otherwise taken to serve the King, or for other lawful cause) without License; upon pain of imprisonment for one Moneth without Bail, and Five pounds: For which, the party may have his Action and Costs. 5 *El. 4.*

Putting a-  
way a Ser-  
vant, Vide  
antca.

The Master cannot discharge his Servant, during his term, &c. without the Agreement of the Servant. And now by the Statute 5 *El. 4.* it must be for some reasonable cause to be allowed by one Justice of Peace, at least, &c. *Vide P. 5.* otherwise the Master shall forfeit Forty shillings. *Tamen quere.* For where the departure or putting away of the Servant, is by the joyn't consent of the Master, and of the Servant, such putting away 19 H. 5. 30.  
Br. 27.

away or departure, seemeth not to be within the Statute of 5 *Eliz.* neither is the allowance of the Justice of Peace requisite or needful therein.

6 E.4. 2.  
1 E.6.33.  
Br.30. 38.  
The Master may discharge his servant by word, but an Apprentice cannot be discharged by his Master, except it be by Writing: For that an Apprentice cannot be but by Writing.

1 E.5. 33.  
Br.30. 38.  
Br. 48.  
10 H.2. 3.  
If a Servant shall be put away by his Master, yet he shall have his Wages for the time he served. And yet in this case, if the Servant agree thereto, the Servant shall have no Action to recover any part of his Wages, but must crave the help of the Justice of Peace herein. But if such Servant be within age, it seemeth such Agreement shall not prejudice the Servant.

10 Ed.4.2.  
49 H. 19.  
Br. 40.  
Apporc.]  
26.  
But if a Servant of his own accord shall depart from his Master before his time expired, he shall loose all his Wages.

If a Servant be retained according to the Statute, and the Master dieth, his Executors shall be chargeable to pay such Servant his Wages. Otherwise it is where the Retainer was not according to the Statute, except it were by Indenture. See 2 H.4. 15. Br. Labor. 44. and Fitz. Nat. Br. 168. f.

An Infant of five years of age, or other person which is not *Potens in corpore*; yet if they shall be retained, and shall serve indeed, their Master must pay them their Wages. See 38 H.4. 22. Br. Labor. 46. and Ley Gager. 67.

If a Servant retained for a year, happen within the time of his service to fall sick, or to be hurt or lamed, or otherwise to become *Non potens in corpore*, by the Act of God, or in doing his Masters business; yet it seemeth the Master must not therefore put such Servant away, nor abate any part of his Wages for such time.

3 H.6. 37.  
If a Servant shall refuse to do his service, that is a departure in Law, although he stay still with his Master.

Fitz. 1. 68.  
Br. 51.  
P. 6.  
If the Master shall detain from his Servant his Wages, Meat, or Drink; this is a good cause of departure: But yet this cause is now by the Statute of 5 *Eliz.* to be allowed of by the Justice of Peace, before the Servant may lawfully or safely depart.

Fitz. 168.  
Br. 51.  
P. 9.  
So if the Master shall License his Servant to depart, or if the Master, or Wife of the Master shall beat the Servant; these were good Causes for the Servant to depart, before the Statute 5 *Eliz.* 4. But now the allowance of the Justice of Peace, is requisite as aforesaid. And yet note, that the Master by Law is allowed with moderation to chastise his Servant or Apprentice. See 33 H.8. 12. And in the title, *Surety for the Peace*.

But now that by the Statute of 5 *Eliz.* the Causes of putting away and departing of Servants, are referred to the consideration and allowance of the Justice of Peace: It behoveth them to have good care, lest by their giving too much way therein, either to the Master or Servant, many, which might by due ordering, have proved good Servants, turn Rogues and Vagabonds.

"If a Servant depart before the end of his Term, or at the end of his Term, without a Quarters warning, or refuse to serve for the Wages limited, or promise to serve, and do not serve; upon complaint any two Justices, or the Major and two Aldermen, &c. They may commit him to Ward without Bail, until he be bound to the party offended, to serve as he ought. 5 *Eliz.* 4.

"If any Servant or Apprentice shall unlawfully depart, or flee into another Shire, the Justice, &c. may grant Writs of *Capias* to the Sheriff, or other Officer, whither the Servant is gone, to take his Body returnable before

‘before them, &c. who shall imprison the Offender, till he find sufficient  
‘surety to serve his Master again, 5 Eliz. 4.

§. 15. *Testimonial* No person (retained in Husbandry, or in any the Arts and Sciences mentioned in the Statute of 6 Eliz. cap. 4.) after his Retainer expired, may depart out of one Limit, Town, or Parish, into another, without a Testimonial, under the Seal of the Officer of the Town where he last served, &c. Neither may any person take into his service any Servant so departing, without shewing such Testimonial, upon pain that every person retaining any such Servant, without such Testimonial, shall forfeit Five pounds, being thereof convicted upon Indictment taken in the Sessions of the Peace, &c. And upon pain, that every Servant so departing without such Testimonial, shall be imprisoned until he procure a Testimonial; the which, if he cannot do within the space of Twenty one days, next after the first day of his imprisonment, then he is to be whipped and used as a Vagabond; and so if he be taken with any counterfeit or forged Testimonial. 5 Eliz. cap. 4. P. 7, 8.

§. 16. *Constables. Sessions.* ‘Now for the better rating of Servants Wages, and for the better placing, bestowing, setting, and ordering, not only of Servants, but also of ‘all such idle People (Men and Women) as being fit and able to labor and ‘serve, do nevertheless refuse to labor, or seek to get themselves services, ‘or to get work (rather living idle at home with their Parents) or perhaps ‘cannot get themselves any Services, the Statute made 5 Eliz. cap. 4. hath ‘enabled the High Constable of Hundreds in every Shire, to hold, keep, ‘and continue their Petit or Statute Sessions in all Shires wherein such ‘Sessions have been used to be kept, and after the ancient manner: And ‘as to these Sessions, both Householders, Servants, and others fit for Service, do or ought to repair; so if one or two of the next Justices of ‘Peace in every Division, would take the pains to be there also to assist the ‘High Constables, it would both add force to their Proceedings, as well ‘for the placing of Servants, and Idlers; as also for the assessing of the ‘Wages: And also for the spying out and preventing of many other the ‘abuses and disorders both in Masters and Servants.

§. 17: ‘Justices of Peace shall meet twice in the year to inquire of the ‘Breaches of the Statute of 5 Eliz. 4. And shall have Five shillings per ‘diem for their Wages. 5 Eliz. 4.

§. 18. ‘A moyety of all Forfeitures to the King, the other moyety to the ‘Informer. And the Justices may hear and determine the Offence, as ‘well by Indictment and Information, as Action of Debt or Bill; and ‘may make Process according to Law; and in Michaelmas Term shall ‘certifie the Estreats, 5 Eliz. 4. But in Corporate Towns such person ‘shall have the Kings part of all Forfeitures, as the Major, &c. shall appoint. 5 El. 4. Cro. 9. c. 1. p. 290. Hob. p. 183.

Leather. CHAP. LIX.

§. 1. *Gashing.* ‘NO person, by himself or other, shall gash or cut the Hide of any 1 Jac. 22.  
‘Ox, Bull, Steer, or Cow, upon pain to forfeit Twenty pence for  
‘every Hide.

*Watering.* ‘No Butcher shall Water any Hide, but in June, July, or August, nor  
‘offer to sale any Hide putrefied, or rotten, or forfeit Three shillings  
‘four pence for every such Hide.

‘No



- 1 Jac. 22. "No Butcher shall by himself, or any other, use the Trade of a Tan-<sup>Butcher.</sup>  
ner, while he useth the trade of a Butcher, upon pain to forfeit 6 s. 8 d.  
"per diem.
- 1 Jac. 22. "No person shall Tan any Leather, nor take any benefit or advantage <sup>§. 2.</sup>  
"by that Craft, except he have been brought up and instructed therein, <sup>who may be</sup>  
"as an Apprentice, or Covenant, or Hired-servant, by seven years; and <sup>a Tanner.</sup>  
"except the Wife, and such person as shall marry the Wife or Daughter to  
"whom he shall leave a Tan-house and Fats; and except such Son or Sons  
"as have used the Trade four years, upon pain to loose the Leather, or the  
"just value thereof.
- 1 Jac. 22. "No person using the Trade of a Tanner shall use any Trade exer-<sup>Trades.</sup>  
cised in the cutting of Leather, upon pain to forfeit the Leather, or just  
"value.
- 1 Jac. 22. "No person shall buy, contract for, or bespeak any Rough-hide, or <sup>Buying.</sup>  
"Calve-skin, except such person as may use the Trade of a Tanner, and  
"shall Tan the same; or such persons as shall Tan the same, except salt  
"Hides for Ships, upon pain to forfeit the Leather, or just value.
- 1 Jac. 22. "No person shall forestal Hides, or buy them, but in Fair or Market, <sup>§. 3.</sup>  
"except of the owner that killed for his own use, upon pain to forfeit for <sup>Forestal-</sup>  
"every Hide 6 s. 8 d. <sup>ling.</sup>
- 1 Jac. 22. "No person may buy, contract for, or bespeak any unwrought Lea- <sup>§. 4.</sup>  
"ther, but he that will and shall work out the same into Wares, upon <sup>Buying</sup>  
"pain to forfeit the Leather, or value thereof. <sup>Leather.</sup>
- M. 16 Car. 1. Cro. 425. Lib. meo inter <sup>Currier.</sup>  
1. Cro. 425. "Upon which Clause a Case was *M. 16 Car. 1. Cro. 425. Lib. meo inter*  
"Lodge & Hollimel, where a Currier bought Hides, and Curried them  
"with Oyl and Tallow, and things necessary; and after shaved and died  
"them, and sold them to a Shoemaker; and it was adjudged, this was an  
"offence against this Clause of the Statute, and is against the meaning of  
"5 & 6 E. 6. 15 & 27 El. 16. & 5 El. 8. For a Currier may not buy  
"and sell by whole sale.
- 1 Jac. 22. "Persons using to convert Leather into Wares, may buy at <sup>Leaden-</sup>  
"and Girdlers may sell their Necks and Shreds of Tanned Leather. <sup>hal Gird-</sup>  
"No person using Tanning, shall suffer a Hide or Skin to lie until <sup>lers.</sup>  
"it be over limed. <sup>Lime.</sup>  
"Nor shall put any Hide or Skin in Tanfats, before the Lime be <sup>Tanner.</sup>  
"well soaked and wrought out of them.  
"Nor put or use any Stuff about the Tanning of Leather, but Ash- <sup>§. 5.</sup>  
"Bark, Oak-Bark, Tapwort, Malt, Meal, Lime, Culver-dung, or Hen- <sup>Materials.</sup>  
"dung.  
"Nor suffer Leather to lie or hang wet until it be frozen.  
1 Jac. 22. "Nor dry or parch the Leather with heat of Fire, or the Summer <sup>Parching.</sup>  
"Sun.  
"Nor shall Tan a putrefied or rotten Hide.  
"Nor suffer the Hides for utter Sole-Leather to lie in the Woozes <sup>Woozes.</sup>  
"any less then Twelve Moneths.  
"Nor the Hide for upper Leather, to lie in the Woozes less then  
"Nine Moneths.  
"Nor shall negligently work their Leather in the Woozes, but <sup>Forfeits.</sup>  
"shall renew and strengthen their Woozes as often as is requisit. Upon  
"pain to forfeit every Hide of Ox, Steer, Bull, or Cow, otherwise  
"wrought and put to sale, or the value.  
"No persons shall raise with any mixtures any Hide for Bark, bend <sup>Raising</sup>  
"Leather, Clouting Leather, or other Sole-Leather, except the Hide be <sup>with mix-</sup>  
"sufficient <sup>tures.</sup>

"sufficient for state, largeness, or growth, to be tried by the Tryers, upon pain to forfeit it.

§. 6. "None shall put to sale any Tanned Leather, Red, and unwrought, 1 Jac. 22.  
*Searching.* "before it be searched and sealed in some open Fair or Market; nor until  
 "it be searched and sealed according to that Statute, upon pain to forfeit  
 "for every Hide or piece of Leather 6 s. 8 d. And for every douzen of  
 "of Calves-skins, and Sheeps-skins, 3 s. 4 d. and of the same Hide, Skins,  
 "and Leather, or the value. But this Clause touching, searching, and  
*Skins.* "sealing of such Skins, is repealed by 4 Jac. 6. So as the same be made in- 4 Jac. 6.  
 "to Wares in England.

§. 7. "If any Tanner put to sale any Leather, not sufficiently Tanned or 1 Jac. 22.  
*Not well tanned, or dried.* "Dried, and the same be found so by the Tryers, he shall forfeit the whole  
 "Hide, Back, or Skin, if it be wholly defective, or if part defective, that  
 "part to be cut out by the Tryers.

*undue Tanning.* "No persons shall set their Fats in Tan-hills, or other places where  
 "the Woozes or Leather may take any unkind heat.

"Nor put any Leather in hot or warm Woozes.

"Nor Tan any Hide, Calves-skin, or Sheeps-skin, with warm or hot 1 Jac. 22.  
 "Woozes; or if he do, shall forfeit for every such offence 10 l. and shall  
 "stand in the Pillory three Market days, in a Market Town next the  
 "place of the offence.

§. 8. "The Forfeiture of Forestalling of Oaken Bark. See *tit. Forestalling.*

*Forestalling.* "None using the Trade of a Currier, shall use the Trade of a Butcher, 1 Jac. 22.

§. 9. "Tanner, Cordwainer, or other Trade using cutting of Leather, upon pain

*Currier. Plaet.* "to forfeit 6 s. 8 d. for every Hide or Skin he shall curry.

"No Currier shall curry any Leather in any other then his own  
 "House situate in a Corporate or Market Town.

"Nor shall curry any Leather, not sufficiently tanned and dried,  
 "after its wet season; nor in its wet season, he shall not use Urine, or  
 "other deceitful thing to corrupt or hurt it.

*Materials.* "Nor curry any Leather meet for Utter-Sole-Leather, but with  
 "hard Tallow, and of that, as much as the Leather will receive.

"Nor curry any Leather meet for Upper-Leather, but with good  
 "Stuff, Fresh, and not Salt, through liquored till it will receive no  
 "more.

"Nor burn or scald any Hide or Leather in the Currying. 1 Jac. 22.

*Gash.* "Nor shave any Leather too thin, nor gash or hurt it in the Shaving,  
 "or by other means, but shall work it sufficiently in all respects.

*Forfeits.* "Upon pain to forfeit for every offence (except in Gashing and  
 "Shaving) 6 s. 8 d. And the value of every Hide and Skin so marred  
 "by his evil workmanship; and for every offence by Gashing and Sha-  
 "ving, double so much to the party grieved, as the Leather shall be im-  
 "paired by the Judgment of the Wardens of the Curriers, and Wardens  
 "of the Company whereof the party grieved shall be.

§. 10. "No Cordwainer or other dwelling in London, or within three miles, 1 Jac. 22.

*London, Cordwain-er.* "using wet Leather, shall put any Leather to be curried, but to one free  
 "of the Company of Curriers of London, upon pain to forfeit the Lea-  
 "ther, nor use any curried Leather before the same be searched and allow-  
 "ed by the Curriers, and sealed.

*speed.* "Every Currier shall curry Leather, brought to him, within eight 1 Jac. 22.  
 "days in Summer, and sixteen days in Winter, the party bringing good  
 "Stuff for liquoring it, and that in the presence of the party bringing it,  
 "if he or his servant will be present, and shall not refuse to curry it; upon  
 "pain

"pain of 10 s. for every Hide or piece not well and speedily curried, to  
"the party grieved.

1 Jac. 22. "The Wardens of the Curriers, or such as they shall appoint, shall try  
"and seal all curried Leather, within a day after Currying, by any of their  
"Company, and Request; taking a penny for a Dicker, and a penny for six  
"dozen of Calves-skins, or forfeit for every Hide 6 s. 8 d.

"Cordwainers, &c. shall make no Shooes, Boots, Buskins, Startups, §. 11.  
"Slippers, or Pantofles of *English* Leather wet curried (other then Deer- Cordwain-  
"skins, Calves-skins, Goats-skins, made and dressed like *Spanish* Leather) 13.  
"but of Leather well tanned and curried, or well tanned and well sew-  
"ed with good Thred, well twisted and waxed, and Wax well Rosened,  
"and stitches hard drawn with Hand-Leathers, without mixing the over  
"Leather, i. e. Part Neat, part Calve.

"Nor put into any Shooes, &c. Leather made of Sheeps-skin, Bull-  
"hide, or Horf-hide.

"Nor into the upper Leather of any Shooes, &c. Nor into the nea-  
"ther part of any Boots (the inner part of the Shoo excepted) any Lea-  
"ther called Wombs, Neck, Shank, Flank, Powl, or Cheek.

1 Jac. 22. "Nor put into the utter Sole, any other Leather then the best of Ox  
"or Steer-hide.

"Nor into the inner Sole, any other then Wombs, Neck, Powl, or  
"Cheek.

"Nor into the Trefwels of any double Soled Shooes, other then the  
"Flanks of the Hide.

"Nor shall make or put to sale in any year, between the last day of  
"September, and the twentieth day of April, any Shooes fit for one above  
"four years old, any Boots, &c. wherein shall be any dry *English* Lea-  
"ther, other then Calve and Goat-skins drest like *Spanish* Leather.

"Nor shall shew with intent to put to sale any Shooes, &c. upon the  
"Sunday, upon pain to forfeit for every pair of Shooes, &c. 3 s. 4 d. and  
"the full value thereof.

1 Jac. 22. "The Master and Wardens of the Companies of Cordwainers, Cur- §. 13:  
"riers, Girdlers, and Saddlers in *London*, upon pain of 40 l. shall every Companies  
"quarter of the year, at the least, in *London*, and within three miles searching.  
"thereof, where any Artificers cutting Leather dwell, may enter, search,  
"and seise, if Wares be not made of Tanned Leather; and according to  
"that Act, each Company to search those of their own Trade only.

1 Jac. 22. "The Major and Aldermen, upon pain of 40 l. shall yearly appoint §. 14:  
"eight out of those four Companies, whereof one shall keep the Seal to London.  
"Seise, and Seal Leather in *London*, or three miles next it.

1 Jac. 22. "All Majors, Bailiffs, and Head Officers of all Cities, Boroughs, and Searchers.  
"Towns; Lords of Liberties, Fairs, and Markets, upon pain of 40 l. a  
"moiety to the King, and the other moiety to the Prosecutor) shall chuse  
"and swear two or more persons yearly, to search and view Leather; who  
"shall search and have a mark, and therewith mark Leather that is suffi-  
"cient. Who if they find any Leather not well tanned or curried, or  
"Shooes, Boots, &c. not well made, may seise the same, and retain them  
"until tried by the Tryers.

1 Jac. 22. "The Lord Major shall within six days after seisure, chuse six; Two §. 15:  
"Cordwainers, two Curriers, and two Tanners, who upon Oath shall the London,  
"second or third Market day try it. Tryers.

1 Jac. 22. "Other Majors, Bailiffs, Head Officers, and Lords, with convenient Majors.  
"speed shall elect Tryers, who upon Oath, upon some Market day, with-  
"in



- "in fifteen days after seizure, try, &c. and shall do their Offices upon pain  
"of 5 l. for every default.
- Forfeits.* "The Lord Major, Majors, &c. not electing Tryers, shall for every  
"default forfeit 5 l.
- §. 16. *Searchers.* "Searchers and Sealers of Leather in *London*, shall be nominated e- 1 Jac. 21.  
"very year, and shall not continue above two years, and shall not be cho-  
"sen again within three years, upon pain to forfeit 10 l. for every Month  
"using that Office.
- "The Searcher or Sealer refusing to take the Office, or refusing to 1 Jac. 21.  
"search or seal Leather well wrought, or shall seal any that is insufficient,  
"shall forfeit 10 l. for every offence.
- §. 17. *Leadenhal.* "All Leather to be brought into *London*, or within three miles, shall 1 Jac. 22.  
"be brought to *Leadenhal* before it be perused, and there searched and re-  
"gistered, paying half Fees: But it extends not to Leather brought to *Bar-*  
"*tholomew* or *Southwark* Fair.
- London.* "No Tanned Leather shall be sold in *London*, before searched and 1 Jac. 21.  
"sealed, upon pain of Forfeiture thereof, or the full value.
- §. 18. *Opposition.* "If any withstand or deny any entry, and search to be made in their 1 Jac. 22.  
"Houses, or of their Goods made of Leather, or will not suffer a seizure,  
"shall forfeit 5 l. every time.
- §. 19. *Registry.* "The Searchers and Sealers appointed, shall Register all Leather 1 Jac. 21.  
"bought and sold, with the names of parties, prices, and particulars, taking  
"of the seller for every ten Hides, &c. two pence, and two pence for  
"every six dozen of Calves-skins or Sheepskins.
- "None shall sell, exchange, or put away any Tanned Leather, nor 1 Jac. 21.  
"buy or carry the same out of the Fair before it be Registered, upon pain  
"of Forfeiture.
- §. 20. *London* *Carriers.* "If any Currier in *London*, or within three miles of it, Curry any 1 Jac. 22.  
"Leather insufficiently Tanned, or do not Curry Leather sufficiently, he  
"shall forfeit the Wares, and the just value thereof.
- §. 21. *London* *Artificers.* "If any Shoemaker, Cordwainer, or Cobbler in *London*, or within  
"three miles of it, put any Tanned Leather into any Shoes, &c. or other  
"things made of Tanned Leather, that is not sufficiently Tanned.
- "Or put in any Curried Leather into any Shoes, &c. not sufficient-  
"ly, Curried, Tanned, and Sealed.
- "Or make any Boots, &c. or other things made of *English* Tanned  
"Leather, in other manner then as aforesaid. 1 Jac. 22.
- "Or if any Shoemaker, Sadler, or Artificer, using cutting, or work-  
"ing of Leather, make Wares of Tanned Leather not sufficiently Tan-  
"ned; or of Tanned and Curried Leather not sufficiently Tanned and  
"Curried as aforesaid.
- "Or do not make their Wares substantially and sufficiently. Every  
"person so offending, shall forfeit the Wares or just value.
- London* *Market.* "No person shall in *London*, or within three miles of it, sell any Wares 1 Jac. 22.  
"appertaining to any Artificer, using, cutting of Leather, but in open  
"Shop, Fair, or Market, upon pain of Forfeiting the Wares sold, and 10 s.  
"for every time.
- "All persons using, cutting of Leather in *London*, or within three 1 Jac. 22.  
"miles, shall be under the search of, &c.
- §. 22. *Penalty* *Money.* "All Penalties of Money (except what is otherwise disposed) shall 1 Jac. 21.  
"be divided in three parts; one part to the King, another to the prose-  
"cutor, in any Court of Record; a third party to the City, &c. where,  
"&c.
- "All

- 1 Jac. 22. "All Wares of Tanned and Curried Leather in *London*, or within *London*  
"three miles, forfeited, &c. to be brought into the *Guildhall* of *London*,  
"and payed one part to the seiser, the second part to the Chamber,  
"and the third part to the Poor; as the Major and Aldermen shall think  
"fit.
- 1 Jac. 22. "All Shooes, &c. and other things made of Leather, in any place  
"above three miles from *London*; if in a City, &c. shall be brought to  
"the Common Hall; if no Hall, to an open place and prized: One part  
"to the Poor, and to Works of Charity, the second part to the City, &c.  
"or Lord, the third part to the Seiser.
- 1 Jac. 22. "Forfeited Wares shall not be sold so any that will sell the same a-  
"gain; or the seller shall forfeit for every part thereof 3 s. 4 d.
- 1 Jac. 22. "The Hides and Skins of Ox, Steer, Bulls, Cow, Calf, Deer Red and §. 23.  
"Fallow, Goats, and Sheep, being Tanned or Tawed, and every Salt *Leather*.  
"Hide, shall be reputed Leather.
- 1 Jac. 22. "Justices of Peace, Major, &c. and Head-officers in their Sessions, §. 24.  
"Leet, or Law-day, shall hear and determine all these offences, and by *Judges*.  
"their discretions examine the persons suspected.
- 4 Jac. 22. "Dry Currying and Frizing, shall be construed to be Dressing and §. 25.  
"Currying after the manner of *Spanish* Leather; and all Artificers (other *Dry Currying*.  
"then Shoemakers, between the last day of *September*, and the twentieth *ing*.  
"day of *April*) may use it as before the making of that Act; so as it be  
"well and sufficiently Curried and Dressed.
- 1 Jac. 22. "Every Controller, Customer, Surveyor, or Collector of Tonnage, §. 26.  
"Poundage, or their Deputies, or any other persons hearing or knowing *Officers*.  
"of any Leather to be transported from any place within his Office, and  
"do not endeavor to seise it; or being transported, do not disclose it *Transport*.  
"within forty days after their knowledge or hearing, in some Court of  
"Record; shall for the first offence loose 100 l. and for the second, his  
"Office.
- 1 Jac. 22. "Every Officer that shall make a false Certificate of the arrival of any *Certificate*.  
"Leather in any Port, Creek, or place, shall forfeit One hundred  
"pounds.
- 1 Jac. 22. "All Grants and Licenses obtained to dispense with any thing in the §. 27.  
"Statute, shall be void. *Licenses*.
- 1 Jac. 22. "The Statute of 5 El. 8. is Repealed, and all Acts thereby Repealed §. 28.  
"are Repealed. *Statutes*.
- Cro. in 16  
Car. 1. p.  
426. "The Statute of 5 & 6 E. 6. cap. 15. touching Ingrossing of Leather,  
"is yet in force; for the Statute of 1 Ma. cap. 8. which Repealed it, is  
"Repealed by 5 El. 8. Which Statute of 5 El. 8. is Repealed by 1 Jac.  
"22. But that Statute doth also Repeal all the Statutes Repealed by  
"5 El. 8. But the Justices of Peace have no power to inquire of offences  
"against 5 E. 6. 15. Also the Statute of 27 El. 16. is yet in force; yet see  
"4 Jac. 6. which recites, that it appears 4 Jac. 22. That the true intent  
"and meaning thereof was, to make void all former Statutes made con-  
"cerning Tanners, Curriers, Shoemakers, and other Artificers occupy-  
"ing the cutting of Leather; and to comprehend in one Statute, all things  
"mentioned in the former Statutes, &c.
- 14 Car. 1.  
c. 7. "None shall carry or transport, or cause, &c. out of *England* into §. 29.  
"Scotland, Ireland, or any the Isles belonging to *England*, or into any *Transportation*.  
"parts beyond the Seas, the Skins or Hides Tanned or Untanned  
"of any Ox, Steer, Bull, Cow or Calf, otherwise then is thereby  
"directed.

- Importing.* "No such Hide taken from the body of such Beast, in any Island be-  
"longing to *England*, except *Ireland*, shall be carried out of that Island,  
"into any place but into *England*, upon pain to forfeit for every such of-  
"fence double the value thereof. 14 Car. 2. c. 7.
- Penalty of transportation.* "Every person so transporting any Hides or Leather, except Calves-  
"skins, and Sheeps-skins dressed in the Wool, and found guilty thereof,  
"shall be disabled to Trade in Leather, and for every offence forfeit  
"500 *l.* 14 Car. 2. c. 7.
- §. 30. *Sale in Market.* "All Red Tanned Leather made of any Hides or Skins of the Beasts  
"aforesaid, shall be bought only in open Market for Leather, upon pain  
"for every offence to forfeit the Leather, or value thereof; and the Con-  
"tract to be void. 14 Car. 2. c. 7.
- §. 31. *Searched.* "All such Leather shall be searched and sealed before it be put to sale,  
"and upon sale Registered, and a true Entry thereof, made by the Buyer  
"and Seller, both to be present; and their names, and place of abode to  
"be entered; upon pain, that the Buyer or Seller not doing the same, shall  
"for every such offence, forfeit the Leather and value thereof. 14 Car. 2. c. 7.
- §. 32. *Boots.* "Boots, Shooes, and Slippers, may be transported. 14 Car. 2. c. 7.
- §. 33. *Searching and Seizing.* "All Justices of Peace, Majors, and Chief Officers of Corporations,  
"may as well by Land, as by Water, search for, and seize all Leather and  
"raw Hides, wrought or unwrought, cut or uncut, packed or unpacked,  
"intended to be transported Beyond Sea, or into *Scotland*, except Calves-  
"skins, and Sheeps-skins as aforesaid. 14 Car. 2. c. 7.
- §. 34. *Tanners shaving.* "Every Tanner who shall shave, cut, and rake their Upper Leather-  
"Hides all over, and the Necks of the Backs and Butts, shall forfeit the  
"same; and the Searchers and Sealers may search it. 14 Car. 2. c. 7.
- Penalties.* "The Penalties shall be Recorded by Action of Debt, Bill, Plaint,  
"or Information (amongst others) in any Court or Courts of Record, in  
"the City, Town, County, or place, where the offence is committed;  
"wherein no wager, &c. and shall not be removed out of the same. The  
"moiety to the King, the other moiety to the Informer. 14 Car. 2. c. 7.
- Nuisance.* "All Exportation and Transportation contrary to the Act, is declared  
"a Common Nuisance. 14 Car. 2. c. 7.

London. CHAP. LX. V. 32.

The Highways and Streets about *London*, being much impaired by ex-  
cessive carriages, the Court made several Orders for Redress, which  
were fit to be put in execution, viz.

Whereas since His Majesties late Proclamation against Carriages  
and Waggoners that bring great loads to the City of *London*,  
from many parts of this Kingdom with above five Horses in a Team, to  
the decay of His Majesties Highways, many have notwithstanding by sub-  
tilty instead of Horses, drawn their said load with Oxen and Horses above  
the said number, thinking thereby to avoid the danger. It is now order-  
ed and so determined, That from henceforth three Oxen shall be taken in  
the case for two Horses, and four Oxen for three Horses, and so after the  
rate.  
And afterwards in the late Kings time it was ordered, That all Wag-  
goners and Waggoners be prohibited to travel to *London* with four Wheels  
in their Waggoners, and every Offender therein to be convented before  
the next Justice of Peace.

No



35 Eliz. 6.  
Lo. Hob. 1.  
p. 36. 1.  
"No new Buildings shall be erected for Habitation, within three miles  
"of London, nor any Building shall be divided or converted to several  
"Habitations there, except such Houses shall be fit for the dwelling of  
"such a person as heretofore hath been assessed to the Subsidy of Five  
"pounds in Goods, or Three pounds in Lands, at the Assessment next be-  
"fore the said Building or Division, or as shall be adjudged by the two  
"next Justices of Peace (by writing under their Hands and Seals, to be  
"presented at the next Quarter Sessions) to be fit and able to be assessed  
"in the Subsidy, 35 Eliz. 6.

"The two next Justices of Peace have power to decide and determine  
"of the sufficiency and conveniency of such Houses, and of the sufficiency  
"of the Inhabitants therein. *Ibid.*

"Several Orders were made for the stopping of Buildings began in  
"Lincoln-Inn-Fields, 8 Sep. 11 Jac. And several other in that Book of the  
"Sessions, *Mid.*

"An Order to prohibit any Workmen from erecting any new Build-  
"ings in that part near Clements-Inn, and New Inn, 28 Aug. 8 Car. Lib.  
"Sess. Pac. *Mid.*

"An Order for stay of erecting of new Buildings, according to an Or-  
"der of the Star-Chamber, 20 Octob. 40 Eliz. Ord. 2 Octob. 10 Car. Lib.  
"Sess. Pac. *Mid.*

"For Repairing and Inlarging Streets in and about London. See tit.  
"Private High ways.

## Malt. CHAP. LXI. V. 33.

2 Ed. 6. 10.  
27 El. 14.  
1 Jac. 25.  
p. 4.

§. 1.  
The Constables or Bailiff of any Town, where any deceitful Malts  
shall be made or mingled, to be sold contrary to the Statute, 2 Ed. 6. One Justice.  
may from time to time view and search all such Malt, as shall be made or  
put to sale within any of their Towns; and if thereupon they shall find  
any Malt put to sale, being evil made, or mingled with evil Malt, contrary  
to this Statute; then the said Constable or Bailiff, so finding any such de-  
ceitful Malt, with the advice of any one Justice of Peace, may cause the  
same to be sold to such persons, and at such reasonable prices, as to the  
discretion of the same Justice shall seem expedient, 21 Jac. cap. 28. and  
3 Car. 4.

§. 2.  
These deceitful Malts be of three sorts, *scil.* Such as be not well made,  
or not well dressed, or mixed. As,

1. First, If any Barley-Malt shall be made (in the Moneths of June,  
July, and August, only excepted) if the same Malt shall not have in the  
making thereof (*scil.* in the fat, floor, steeping, and drying thereof) three  
weeks at the least; and in the Moneths of June, July, and August, seven-  
teen days at the least. For under such times the Malt cannot be well made,  
nor wholesome for any Mans body; and Malts not sufficiently dried, can-  
not be kept long, but will be musty, and full of wevils.

2. Secondly, If any Malts shall be put to sale which be not well trod-  
den, rubbed, and well fanned.

3. Thirdly, If any Malts be mingled, *scil.* Malt not well made as a-  
foresaid, or made of Mow-burnt or spired Barley, and mixed with good  
Malt, and so put to sale.

39 Eliz.  
16. p. 6.

§. 3.  
The Justices of Peace at their Quarter Sessions, (or the more part of  
them) at all times may suppress and discharge, or restrain the number of  
Malsters; and also may restrain such persons as they shall think meet,  
for

for buying Barley to convert to Malt. And if any person shall refuse, disobey, or not perform such suppressing, discharge, or restraint, or any Order which the said Justices in their Session shall set down touching the same; then, and so often such person being thereof duly convicted before the Justices at their Quarter Sessions, or before any two Justices of Peace out of their Sessions (by his own confession, or by two Witnesses) shall be by the said Justices committed to the Common Goal, there to remain without Bail for three days, and after that until he shall become bound by Recognizance in Forty pounds to the Kings use, before some one Justice of Peace, to perform and obey such order, suppressing, discharge, or restraint. So that any two Justices of Peace may convict such offenders (upon their confession, or by two Witnesses) and then may commit them, as *one Justice* aforesaid; and after any one Justice of Peace may take such Recognizance, as aforesaid.

## Markets and Fairs. CHAP. LXII.

§. 1. *Name.* "Fair seemeth to be derived from the Latin, *Feria*, *Nundina enim semper* *per instar festi sunt*, saith *Skinner's Lexicon*.  
"Market seems to be derived from the Latin, *Mercus* or *Mercari*, saith *Skinner's Lexicon*.

§. 2. *Priviledge.* "Fairs were anciently places of great resort and priviledge; for by *Civil Law*, *Nundinae habent publicam securitatem, ut nemo privati debiti causa ibidem possit interpellari, non delicti*; which must be understood of "Debts and Offences preceeding the Fair; for as to Contracts there made, "the Law hath provided a Court of *Pipowders*, which is incident to a "Fair; and is a Court of Record for the speedy determining of Differences there arising upon Contracts.

§. 3. *Time of continuance.* "Fairs are accounted things of Franchise and Priviledge, as well as "of Profit; and whether they be held and claimed by Charter of the "King, or by Prescription, which supposes a former Charter, they ought "to be holden for no longer time, then such Grant or use will warrant: "And after such time, what is done there, is not warranted or justifiable, "nor amounts to more then a private transaction, and the Sheriff ought to "make Proclamation, That those that have Fairs keep them no longer "then they ought to do; and every Lord of a Fair, shall at the beginning "thereof, make Proclamation how long the same is to continue, upon "pain to be grievously amerced to the King: And if they hold them "longer then they ought, they shall be seised into the Kings hands, until "they make Fine for the offence; and if a Merchant sell Ware after the "time the Fair ought to end, he shall forfeit to the King double the value "of what is sold, and the prosecutor shall have the fourth part.

§. 4. *Festival.* "Fairs and Markets on the principal Feasts, *viz. Ascension-day, Corpus Christi day, Whitsunday, Trinity Sunday*, and all other Sundays. The "Assumption of our Lady, All-Saints, and Good Friday, shall cease from "all shewing of Goods and Merchandises, and necessary Victuals only "excepted, upon pain of Forfeiture of their Goods shewed the four "Sundays in Harvest excepted, and the Fairs or Markets which are granted to be holden on those Festivals, may be holden within three days, before or after.

§. 5. *Place.* "No Fairs or Markets shall be kept in Church-yards, for the honor of the Church.

"Buying

- "Buying and Selling again in the same Fair or Market of Cattle for- §. 6:  
 "bidden. See 3 & 4 E. 6. 19. *Vide tit. Cattle.* Cattle.
- "Touching sale of Horses in Fairs and Markets, and the duty of the §. 7:  
 "Lord or Owner of the Fair thereabouts. See 2 & 3 P. & M. 7. and *Tit. Horses.*
- "Horses. & 31 El. 12.
- "That such as live in the Countrey, shall not sell divers Merchandises §. 8.  
 "there named in Towns, except in open Fairs. See 1 & 2 P. & M. 7. Country;
- "But the Justice of Peace hath nothing to do therein.
- "For the Office of Clerk of the Market. See afterwards, *tit. Weights*  
 "and Measures.
- "And because Justices of Peace have often to do with property, and §. 9:  
 "how far it may be divested by sale in a Market Overt, it will be necessary Rules.
- "to add some few Cases touching the same.
- "1. That in *London*, every day in the week, is a Market day, except London;  
 "Sunday, and a sale *bona fide* in a Shop therein any day of the week, is  
 "good.
- "2. The sale in such a Shop must be of things proper to the Trade of  
 "the Shop-keeper, and so a sale of Plate in a Scriveners Shop, is not  
 "good; and so of every other Trade.
- "3. If a sale be of Plate in a Goldsmiths Shop (where it is properly  
 "to be sold) it must be publickly and open: For if a sale be there of Plate  
 "in an Inner-shop, or behind a Curtain, or a Cup-board, or the  
 "Windows be shut, or any thing else hides it; so that he that passes by,  
 "cannot see what is done there, it will not alter the property. All this  
 "was resolved *H. 38 El. Co. 5. 83. Moors Rep. p. 360. Evesq; de Worcesters*  
 "Case. *Moors Rep. p. 624.*
- "4. If a sale in a Market Overt be covinous, or the party that buys  
 "the Goods knows they were stoln, this sale alters no property. *33 H. 6. 5.*  
 "*Co. 3. 78.*
- "5. The King cannot Grant to one, that his Shop shall be a Market;  
 "to alter the property of a strangers Goods, for it is against Law.
- "6. In a Market or Town where several things are sold in distinct  
 "places, the sale ought to be in every part of the Town, of what is there  
 "saleable, as Horses in *Smithfield.* *Moors Rep. 360.*
- "7. He that pleads a sale in Markets, must plead it to be done *Pleno*  
 "*Mercatu*, else it is not good. *Moors Rep. p. 360.*

## Marriages. CHAP. LXIII.

- 12 Car. 2. "A Ll Marriages made since One thousand six hundred forty and two,  
 cap. 33. "before any Justice of the Peace, or otherwise confirmed and  
 "made good; and Issues upon Bastardies or otherwise touching the same,  
 "to be tried by Juries.

## Mariners. CHAP. LXIV. V. 34.

- 5 Eliz. 5. N O Fisherman using the Sea, shall be taken to serve as a Mariner by the  
 Kings Commission, but by the choice of two Justices of Peace next  
 adjoining to the place where he is taken.

See more for Mariners, *Tit. Rogue and Soldier.*

Night



## Night-walkers. CHAP. LXV. V. 35.

**E**Very Justice of Peace (*Ex Officio*, and by the Commission, the first *Assignavimus*) may cause to be arrested all Night-walkers, be they <sup>Lamb. 46.</sup> strangers or other persons that be suspected, or that be of evil behavior, or <sup>112.</sup> of evil fame; and more particularly all such suspected persons as shall sleep <sup>11 H. 7.</sup> in the day time, and go abroad in the nights: And all such as shall in the <sup>10.</sup> night-season haunt any House that is suspected for Bawdery; or shall in the <sup>See ric.</sup> night-time use other suspicious company; or shall commit any other out- <sup>March.</sup>rages or misdemeanors; and may force them to find surety for their Good Behavior. See the title, *Surety for the Good Behavior*.

For as one saith, Such Night-walkers (or Night-birds) are ominous, <sup>Plal. 104.</sup> like the Whistler, &c. And such Night-walkings are unfit for honest men, and more suiting to the Thief (the right Whistler) and to Beasts of the Prey, which come forth of their Dens, when Man goes to his rest.

## Nufances. CHAP. LXVI.

- §. 1. **F**Or Nufances in High-ways. *Vide Tit. High-ways. §. 27.* <sup>33 H. 8.</sup>  
 Hemp. "If any person shall water any Hemp or Flax, in any River <sup>C. 17.</sup>  
 "Running Water, Stream, Brook, or Common Pond, where Beasts be usual-  
 "ly watered, he shall forfeit Twenty shillings; a moiety to the party  
 "grieved, or any that will sue; the other moiety to the King, to be sued  
 "for in any Court of Record.
- §. 2. "Transporting of Leather, contrary to 14 Car. 2. c. 7. is declared a <sup>14 Car. 2.</sup>  
 Leather. "Common Nufance. <sup>C. 7.</sup>
- §. 3. "Importing Cattle from Ireland, declared to be a Common Nu- <sup>18 Car. 2.</sup>  
 Cattle. "fance. <sup>C. 2.</sup>
- "No Butcher or his Servant shall slay any manner of Beast in any City, <sup>4 H. 7. 3.</sup>  
 "Borough, or Town-walled (*Berwick* and *Carlisle* excepted) upon pain for  
 "every Ox 12 d. And for every Cow and other Beast 8 d.

## Oath. CHAP. LXVII. V. 36.

- §. 1. **N**O Judge, Commissioner, or Subject, is compellable to take any <sup>2 Instit.</sup>  
 "Oath, but what is warranted by the Common Law, or directed <sup>P. 479.</sup>  
 "by Statutes: And therefore you shall find always directing Oaths, and  
 "inabling Justices of Peace to administer them, as 31 El. 12. 2 Instit. 719.  
 "and infinite others, 27 El. 11.
- §. 2. Any one Justice of Peace may compel such as are between the age of <sup>Lamb. 160.</sup>  
 Peace. fifteen years and threescore, to be sworn to keep the Peace. See the Sta-  
 tute of *Winchester*, 13 E. 1. cap. 6. And the Articles of Inquisition upon the  
 said Statute of *Winchester*, made about Anno 34 E. 1.
- §. 3. "If any person of the age of eighteen years, and under the degree of <sup>7 Jac. 6.</sup>  
 "a Baron, shall stand and be presented, indicted, or convicted, for not  
 "coming to Church, or not receiving the Communion before the Ord-  
 "nary, or any other having power to take such Presentment or Indict-  
 "ment; or if the Minister, Petty-Constable, and Church-wardens, or any  
 "two of them, shall complain to any Justice of Peace, near adjoining to  
 "the

"the place where the offender dwells; and he shall find cause of suspicion;  
 "That any Justice of Peace of that County, &c. or to whom complaint  
 "shall be made, shall require him to take the Oath; and if the party re-  
 "fuse, the party authorised to give the Oath may commit the party re-  
 "fusing, to prison without Bail, until next Sessions or Assizes, where the  
 "Oath shall be again tendered him, the party refusing shall incur a *Premi-*  
 "*nire*, except *Femes Couverts*, who shall be committed until they take the  
 "Oath.

"See also the Statutes of 1 El. 1. 5 El. 1. 3 Jac. 4 & 5. What persons  
 "ought to take the Oaths of Supremacy and Obedience, and before  
 "whom. *Et hic, Tit. Recusants.*

Two such Justices, &c. may take the Oaths of the Under-Sheriffs, and  
 their Officers, &c. See the title *Sheriffs*.

Swearing profanely. See more *Chap. 55.*

13 & 14  
 Car. 2.  
 cap. 11

"No person may maintain, That the taking of an Oath in any case  
 "whatsoever (though before a Lawful Magistrate) is unlawful, and con-  
 "trary to the Word of God; nor may wilfully refuse to take an Oath, by  
 "the Laws of the Land being duly tendred, nor may perswade any other  
 "to refuse and forbear the taking the same so tendred; nor go about by  
 "Printing, Writing, or otherwise, to maintain, That the taking of an Oath  
 "in any Case whatsoever, is unlawful; upon the Penalties in the said Act,  
 "as upon Quakers. For which, see *Quakers*.

*Partridges.* CHAP. LXVIII. V. 37.

11 H. 7. 17

"If any person (shall out of his own Warren, and upon the Freehold of  
 "another, without the Consent and Licence of the Owner or Pos-  
 "sessor) take Feasants or Partridge by Nets, Snares, or other Engines, he  
 "shall forfeit 10 l. A moiety to the Prosecutor, and the other moiety to  
 "the Owner or Possessor. And the Justices of Peace have Authority to  
 "hear and determine it, as well by Inquisition as by Information and  
 "Proof.

23 El. 10.  
 P. Feasants.  
 2.  
 P. Just. 38.

Every Justice of Peace (by the Statute of 23 Eliz.) may examine all  
 Offenders, for the destroying or taking of Partridges or Feasants in the  
 night-time; and for Hawking or Hunting with Spaniels, in any Eared or  
 Coddled-corn; and may bind by Recognizance the Offenders with good  
 Sureties to appear at the next General Sessions of the Peace to answer their  
 said offences, &c. "Which Justices in Sessions have power thereby to  
 "hear and determine the same: The Forfeiture for a Feasant is 20 s. and  
 "for a Partridge 10 s. And if not paid within ten days after conviction,  
 "then to have one moneths imprisonment without Bail. The one moiety  
 "of the Forfeitures to the Lord of the Liberty, the other moiety to the  
 "Prosecutor by Action, &c. But if the Lord of the Liberty shall License,  
 "dispense with, or procure such taking; the whole Forfeiture shall go to  
 "the Poor, to be recovered by one Church-warden, &c.

But now by the Statute made 1 Jac. 27. & 7 Jac. 11. the offences of  
 destroying, &c. of Partridges and Feasants (generally) is referred to two  
 Justices of Peace, to examine, hear, and determine out of Sessions. *Vide*  
*hic infra.*

23 Plo. 10.  
 p. ibid.

Also after the conviction of any such offender (according to the Sta-  
 tute of 23 Eliz.) for taking or destroying any Partridges or Feasants in  
 the night time, any one Justice of Peace of that County, may bind such  
 offenders

§. 4.

§. 5.

§. 1.

With Nets

§. 2.

In the  
 night.

Forfeits

§. 3.

offenders with good Sureties, that for the space of two years, they shall not take or destroy any Partridges or Feasants contrary to that Statute.

§. 3. 1. By the Statute made 1 Jac. every person which shall shoot at, kill or destroy (with any Gun or Bow) any Partridge, Feasant, House-Dove, or Pigeon, Hearn, Mallard, Duck, Teal, "Widgeon, Heathcock, or any "Grouse-dove", or any such Fowl, or any Hare. 1 Jac. 7.  
P. Feasants  
6, 7.  
21 Jac. 21.  
3 Car. 4.

2. Or shall take, kill, or destroy any Partridge, Feasant, House-dove, or Pigeon, with Setting dogs and Nets, or with any manner of Nets, Snare, Engines, or Instruments.

3. Or shall take out of their Nests, or willingly destroy, or break in the Nest, the Eggs of any Feasant, Partridge, or Swan.

4. Or shall trace or course a Hare in the Snow.

5. Or shall at any time take, or destroy any Hare with Hare-pipes, Cords, or any such Instruments, or other Engines.

6. Or shall have or keep any Greyhound for Deer, or Hare, or Setting-dog or Net, to take Feasants or Partridges (except they have Land, &c. of Inheritance, of the clear yearly value of 10 l. or 30 l. per annum for life, or Goods worth 200 l. Or be the Son of a Knight, or Baron of Parliament, or of some person of higher degree, or the Son and Heir Apparent of an Esquire.)

The said offences being proved by the confession of the party, or by the Oath of two sufficient Witnesses, before any two Justices of Peace, (of the County where the offence shall be committed, or the offender apprehended) every of the offenders shall by the said Justices (for every such offence) be committed to the Common Gaol for three Moneths without Bail, unless the said offender shall forthwith, upon the said conviction, pay to the Church-wardens for the use of the poor there; 20 s. for every Hare, Fowl, and Egg, so taken or destroyed; and 40 s. for having such Grey-hound, Setting-dog, or Net. 1 Jac. 27.

Or after one Moneth after his commitment, become bound by Recognisance with two sufficient Sureties in 20 l. apiece, with condition not to offend thereafter, in any the particulars aforesaid. Which said Recognisance shall be taken by two Justices of Peace of the County where the offender is imprisoned, and by them shall be returned to their next Quarter Sessions. "This Clause relates only to killing of Hare, Fowl, or Egg, and "not to Setting-dog, and Nets.

"If any shall sell or buy to sell again, any Deer, Hare, Partridge, or "Feasant, except Partridges and Feasants brought up in Houses, or brought "from Beyond Seas, he shall forfeit for every Deer 40 s. for every Hare "10 s. Partridge 10 s. Feasant 20 s. The one moiety to the prosecutor, "the other to the poor. 1 Jac. 27.

Also it may seem by the general words of the Statute, that any two Justices of Peace may in like manner proceed to examine and punish the offences of selling, or buying to sell again, any Deer, Hare, Partridge, or Feasant, contrary to this Statute; for the words of the Statute be, That any two Justices of Peace, or more together, out of any Sessions, may examine, hear, and determine all offences against this Statute made 1 Jac. Regis, and may perform every other thing requisite for the due execution thereof.

§. 4. By the Statute made 7 Jac. Regis, every person which shall take, kill, or destroy any Feasant or Partridge, with Setting-dogs and Nets, or with any manner of Nets, Snares, or Engines, (it being proved by the confession of the party, or by the Oath of one sufficient witness before any two Justices of Peace) shall by the said Justices be committed for three Moneths without 7 Jac. 11.  
21 Jac. 28.



without Bail; unless the said offender shall forthwith pay to the use of the poor there, 20 s. for every such Feasant or Partridge: And further, to become bound by Recognizance in the sum of 20 l. before any one Justice of Peace, never to take, kill, or destroy any Feasant or Partridge any more: Which Recognizance shall be taken by any one Justice of Peace of the County where the offence shall be committed, and shall be returned to the next Quarter Sessions. "But the preamble of that Clause speaking of persons of meaner and bad condition, making a trade and living of spoiling and destroying those Games, and not sufficient to pay the penalty, shall not extend to persons of sufficiency; and that by a former Clause is qualified to take or kill them. See here §. ult.

7 Jac. 11.  
21 Jac. 8.

Every person which shall hawk at, kill, or destroy any Feasant or Partridge, with any kind of Hawk, or Dog, (by colour of Hawking) between the first of July, and the last day of August, (the same being proved by the confession of the party, or by the oath of two sufficient witnesses, before any two Justices of Peace of the County where the offence was committed, or the offender apprehended) shall by the said Justices be committed to the Common Gaol, there to remain for one Moneth without Bail; unless the said offender shall forthwith upon the said conviction, pay to the use of the poor there (where the offence shall be committed, or the party apprehended) 40 s. for every such Hawking at Feasant or Partridge, and 20 s. for every Feasant or Partridge, which any, and every such offender by himself, his Hawk or Dog, shall take, kill or destroy contrary to the intent of this Statute.

§. 5.

7 Jac. 11.

But no offender punished by vertue of this Law, shall be punished by vertue of any other Law, for the same offence. Also such offences must be complained of to the Justices of Peace, within six Moneths after the offence.

7 Jac. 11.

Any two Justices of Peace may make their Warrant under their Hands, to any Constable, or Head-borough; to enter into, and search the Houses of any person (other then of such as have free Warren, or are Lords of any Mannor, or have Freehold of 40 l. by the year, or more, of some estate of Inheritance; or have 80 l. by the year for term of life, or be worth in Goods 400 l.) being suspected to have any Setting-dogs, or any manner of Nets, for the taking of Feasants and Partridges: And wheresoever they shall find any such Dog or Nets, the same to take, carry away, detain, kill, destroy, and cut in pieces. "As things prohibited and forfeited to such Officer as shall find them.

§. 6.

By the same Statute 7 Jac. c. 11. every such person as hath Free Warren, or is Lord of a Mannor, or hath other Estate "of Inheritance to 40 l. per annum, or for life to 80 l. per annum, or in Goods 400 l." is allowed (on their own Free Warren, Mannor, or Freehold) to take Feasants and Partridges in the day time only, and between Michaelmas and Christmas.

## Pasture Lands. CHAP. LXIX.

2 & 3 P.  
& M. c. 3.

"HE that shall keep or feed above 120 Shear-sheep, for the most part of the year, upon his several Pastures, Lands, Feedings, or Farms, apt for Milch Kine, wherein no other hath Common, shall, so long as he shall keep these 120 Sheep, for every 60 Sheep, keep a Milch Cow; and for every 120 Sheep, rear up one Calf, or forfeit 20 s. for every Moneths not keeping a Cow, and 20 s. for not rearing a Calf.

"Every

- §. 2. "Every person that shall upon such his Pastures, keep or feed above <sup>2 & 3 R. & M. c.</sup> the number of Twenty Oxen, Rounts, Schrubbs, Steers, Heifers, or Kine, shall for every Ten of the said Beasts, keep one Milch Cow, and breed, and wain yearly; and keep for a year, one Calf for every two Milch Cows, upon the pains aforesaid, except the Calf shall die, to be Recorded within a year in any the Kings Courts, or before the Justices of the Peace who have Authority to hear and determine it, by Bill, Information, Presentment, Action of Debt, or Detinue.
- "The Act not to extend to Cattle kept to be spent in a Mans house.
- "The said Act is made perpetual by 13 El. 25.
- "The Act of 2 & 3 P. & M. c. 3. shall extend to Lands fit for Kine <sup>7 Jac. 1.</sup> inclosed since that Act, or hereafter to be inclosed.

## Peace. CHAP. LXX. V. 38.

- §. 1. **E**Very Justice of Peace hath authority and power given him (by the first *Assignavitum*, or Clause in the Commission) to keep and cause to be kept the Kings Majesties Peace; by force of which words, they have as well the ancient power touching the keeping of the Peace, which the ancient Conservators of Peace had by the Common Law; as also all authority which the Statutes since have added thereto: And so they may cause to be kept all the Statutes and Laws now in force, which have been made for the Peace, or keeping thereof; and more especially they may arrest, or cause to be arrested and sent to the Gaol. All Murtherers, Robbers, and Felons, and all persons suspected of such things.
- §. 2. They may also suppress, and bind to the Peace, or Good Behavior, all Affrayors, and all persons unlawfully and riotously assembled, or unlawfully wearing Armor, or any Weapons, by night or by day, or otherwise putting the people in fear, and all unlawful Night-walkers, and the like. All which may be well said to be disturbances or breaches of the Peace. See more for these under their particular titles.
- §. 3. If any Affray, Forcible Entry, or other thing in disturbance of the Peace, be made or committed in the presence, or within the view of a Justice of Peace, he hath power to record it, and to certifie the same; and also to commit the parties to Ward, presently upon the fact done. But if there be any mean space, or time, then he cannot commit them to Ward, but he may record the same, and may (at any time after) make his warrant to take them, and bind them with Sureties, to their Good Behavior, and for want of Sureties may send them to the Gaol. *Gro. 41. per Curiam.*
- §. 4. If the Justice of Peace shall certifie unto the Kings Bench, that *I. S.* hath broken the Peace in his presence, upon this Certificate *I. S.* shall be there fined, without allowing him any Traverse thereto, *Marr. Lett. 3. Crompt. 131.*

What Breach of the Peace is, see more here.

## Petitions. CHAP. LXXI.

- §. 1. **N**O person shall sollicite, labor, or procure the getting of hands, <sup>13 Car. 2. c. 5.</sup> or other consent of persons above twenty or more, to any Petition, Complaint, Remonstrance, Declaration, or Address to the King, or both or either Houses of Parliament, for alteration of Matters established
- Petitions to redress Grievances.*

"established by Law in Church or State, unless the Matters thereof be  
 "first consented to, by three or more Justices of the County; or by the  
 "major part of the Grand Jury of that County or Division, at the Assizes  
 "or Sessions where the matter arises; or if in London, by the Major, Aldermen, and Commons in Common Council. Nor shall any repair to  
 "His Majesty with any company exceeding ten, upon pretence of presenting any Petition, &c. upon pain to incur a penalty not exceeding 100 l.  
 "and three moneths imprisonment without Bail, to be presented at Assize  
 "or Sessions, within six moneths after the offence, and proved by two or  
 "more credible witnesses.

13 Car. 2.  
c. 5.

"But any, not exceeding ten, may present any grievance to a Member  
 "of Parliament after his election, during the Parliament, or to the King;  
 "and both or either Houses of Parliament may Address themselves to the  
 "King.

"Pewterers their trade, and the advantageous using it. See 25 H. 8. 19.

Plague. CHAP. LXXII. V. 39.

1 Jac. 31.  
p. 4.  
21 Jac. 28.

**I**F any person infected, or being, or dwelling in an house infected with the  
 Plague, shall be by any Justice of Peace (or other Head-officer of the  
 City, &c.) commanded to keep his house, and notwithstanding shall wilfully  
 go abroad, and converse in company, having any infectious sore upon  
 him, it is felony; and if such person shall not have such sore about him,  
 yet for his said offence he shall be punished as a Vagabond (by the appointment  
 of any Justice of Peace, as it seemeth) and further shall be bound to  
 his Good Behavior for one whole year.

§. 1.  
Wandering.

It shall be lawful for the Justices (and other Head-officers in Corporate  
 Towns) within their several limits, to appoint Searchers, Watchmen, Exam-  
 iners, Keepers, and Buriers, for the persons and places infected; and to  
 minister unto them oaths, for the performance of their said several offices, and  
 to give them other direction as to them shall seem good, See *Erump. 122. b.*

§. 2.  
Officers.

If any person infected, or dwelling, or being in an house infected, shall  
 contrary to the commandment or appointment of the Justice of Peace (or  
 other Officer) wilfully attempt to go abroad, or to resist such their Keepers  
 or Watchmen, then may such Watchmen with violence enforce them to  
 keep their houses, and not be impeached for hunting them, *ibid.*

P. 11

Any two Justices of Peace (or any two Head-officers) of any City,  
 Borough, Town Corporate, and place privileged, may tax all and every  
 Inhabitant, and all Houses of Habitation, Lands, Tenements, and Hereditaments,  
 within the said City or Borough, &c. or the Liberties thereof (at  
 such reasonable Taxes as they shall think fit) for the reasonable relief of  
 such persons as are infected, or inhabiting in houses that are infected in the  
 same City, &c. And may levy the said Taxes (by Distress and Sale of the  
 Goods of every person refusing, or neglecting to pay the said Taxes) by  
 Warrant under the hands and seals of two such Justices or Head-officers,  
 to be directed to any person or persons, for the execution thereof: And in  
 default of such Distress, and that refusal be made of payment, upon return  
 thereof, the said Justices (or Officers by like Warrant) may commit such  
 person to the Gaol, there to remain without Bail, until he shall satisfy the  
 same Taxation, and the Arrearages.

§. 3.  
Tax.

1 Jac. 31.

If the Inhabitants of any such City, &c. are unable to relieve their infected  
 persons, &c. upon Certificate thereof by the Head-officer, and other  
 Justices of Peace of such City, &c. or by any two of them, to any two  
 Justices of Peace of the County of, or near to the said City, &c. so infected,

§. 4.  
Relieve.



ed, any two Justices of the said County of, or near to the said City may tax the Inhabitants of the County within five miles of the said place infected, at such reasonable weekly rates as they shall think fit, to be levied by Warrant from any two such Justices of Peace of, or near the said City, by Distress and Sale of Goods; and in default thereof, by imprisonment of the body of the party taxed as aforesaid.

"It seemeth hereby, that of necessity there must be some Justice of Peace of the City, to joyn with the Head-officers of the City to perfect, impose, and raise the Tax in the Act mentioned.

If any such infection shall be in any Borough or Town Corporate, where there are no Justices of Peace, or within a Village, or Hamlet, within any County; then any two Justices of Peace of the same County wherein the said place infected shall be, may tax the Inhabitants of the said County, within five miles of the said place infected, at reasonable weekly rates, as they shall think fit, for the relief of the said place infected, to be levied by Distress and Sale of Goods (upon Warrant from the said Justices of Peace of the same County) and in default thereof, by imprisonment as aforesaid.

All such Taxes made by the Justices of the County, for the relief of such City, &c. shall be disposed by the said Justices of the said County, and as they shall think fit (where there are no Justices of Peace in such City, &c.) And where there are Justices of Peace, then in such sort as the Head-officer and Justices of Peace there, or any two of them shall think fit.

All such Taxes made either in City, &c. or County, shall by the said Justices that taxed them (as it seemeth) be certified at their next Quarter Sessions to be holden within such City, &c. or County, respectively, there to be continued, enlarged, extended to other parts of the County, or determined, as at the said Sessions respectively shall be thought fit.

"But it seemeth, That if the Justices of Peace in the City, &c. should think fit to continue or enlarge the Tax assessed on the County, they cannot do that without the like order and consent of the Justices of the Peace of the County in their Sessions, but ought to certify the occasions and necessities of the City, &c. they best knowing it; and herein the Justices of the County are to credit them, unless they have reason to the contrary.

But no Justice of Peace shall do or execute any thing beforementioned, within either of the Universities of Cambridge or Oxford, or within any Cathedral Church, or the Liberties thereof, or within the Colleges of Eaton or Winchester; but the Vice-Chancellor of the University, Bishop and Dean of such Church, and Provost or Warden of the said Colleges, shall do and execute all things above mentioned within their several Precincts.

"This Act is yet in force being continued by 3 Car. I. 4. & 17 Car. I. 4.

Poor. CHAP. LXXIII. V. 40.

§. 1.  
What.

Poor, are here to be understood (not Vagabond Beggars and Rogues, but) those that labor to live, and such as are old and decrepit, unable to work, Poor Widows, and Fatherless Children, and Tenants driven to Poverty; not by Riot, expence or carelesness, but by mischance, &c.

Not working.

Any one of those Justices of Peace, who may appoint Overseers for the Poor, may also send to the House of Correction, or Common Gaol, such as will not employ themselves in work, being thereunto appointed by the Overseers according to the Statute.

§. 2.  
Overseers.

The Church-wardens and two (or more) Justices of Peace, whereof one to be of the Quorum, dwelling in or near the Parish or Division, &c. shall

P. 4.  
43 Eliz. 1.

43 Eliz.  
P. 2.

shall yearly, within one moneth after *Easter*, under their Hands and Seals; appoint in every Parish four, three, or two substantial Housholders, as shall be Overseers of the Poor within the same Parish. 21 *Jac. cap. 28.*

The Justices of Peace, which have the appointing of these Overseers, must therein be careful to chuse such Men as in every Town are fittest, *scil.* Substantial persons, having competency of Wealth, Wisdom, and a good Conscience. "And it seems also, they must be Housholders, not Sojourners, "however otherwise qualified." And indeed, this name and office of Overseers, may becom the best, and not the meanest Men (it being a name and office of great antiquity and excellency, as you may see. 1 *Chro. 23. 4. AEs 20. 28. and AEs 6. 3, 5.*) And though the persons are dignified according to the singularity of the subject; yet this is not the least office to be called Overseers of the Poor: For as God himself hath a special respect to the miseries of the Poor; so they be like God which provide for the necessities of the Poor.

"All Poor, needy, impotent, and lame persons, within every Town-  
ship and Village in the Counties of *Lancashire, Cheshire, Derbyshire, York-  
shire, Northumberland, the Bishoprick of Durham, Cumberland, and  
Westmerland*, and other Counties where by reason of the largeness of the  
Parishes, they cannot reap the benefit of the Statute of 43 *Eliz.* shall be  
maintained and set on work in the respective Township or Village where-  
in they were inhabiting or settled; and that according to the Rules of  
43 *Eliz.* shall be yearly in every Township and Village chosen two or  
more Overseers who shall do, and forfeit as in the Act of 43 *Eliz.* is  
appointed 14 *Car. 2. c. 12.* §. 3. Large P<sup>arishes</sup>.

"The Justices of the Peace of the said Counties, shall do and execute  
such authority in those Villages and Townships, as is directed by 49 *Eliz.*  
14 *Car. 2. c. 12.*

"It seemeth, that this Act extendeth not only to the Counties therein  
named, but also to other Counties where such great and large Parishes are.

These Overseers and Church-wardens (or the greater part of them) with the consent of two or more such Justices, shall take order from time to time for setting their Poor on work, putting out Apprentices, and relieving their impotent, as followeth. §. 4. The Overseers duty.

1. First, for setting to work the Children of all such, whose Parents shall not by the greater part of the said Overseers be thought able to keep and maintain their Children, which Children they, or the greater part of them, by the assent of two such Justices, may also put out to be Apprentices, *scil.* The Men Children till their age of twenty four, and the Women Children till their age of twenty one years, or the time of their Marriage. Apprentices.

And all Poor Children of the age of seven years, or above, so bound Apprentices, may be taken and kept as Apprentices by their Masters, any former Statute to the contrary notwithstanding. See 1 *Jac. c. 25. & 21 Jac. 28. & 3 Car. 4.* but such binding must be by Indenture. See *Ant. tit. Labor. Crom. 184. b.* And see the form of such an Indenture, *hic postea.*

Note, that the putting of Poor Children Apprentice, is holden to be one of the best ways of providing for the Poor, *Resol. 1.*

And one Justice of the Peace may compel any person meet, to be bound as an Apprentice:

2. For setting to work all such persons (married or unmarried) as, having no means to maintain them, use no ordinary and daily Trade of life to get their living by. §. 2. work.

Such also as can get no work, are by the Overseers to be set on work; and any one Justice of Peace may send to the House of Correction, or Com-

‘mon Gaol, such as shall not employ themselves to work, being appointed  
‘thereto by the Church-wardens and Overseers of the Poor of the Parish,  
‘43 *El. cap. 2.*

Now the placing of such Apprentices, and the setting and holding the  
Poor to work, is the more proper and true duty of Overseers, for other-  
wise their bare gathering or raising of a stock, is to little purpose.

§. 6.  
*Trade.*

And note, that the Church-wardens and Overseers of the Poor, may  
by and with the consent of two or more Justices of Peace (whereof one to  
be of the *Quorum*,) &c. “Who within their respective Limits, where there  
“are more then one, or if but one, then by his consent” set up, use, and  
occupy any Trade, Mystery, or Occupation, only for the setting on work,  
and better relief of the Poor of the Parish, Town, or place, where they are  
Overseers, &c. 3 *Car. cap. 4.*

‘Also such Poor as are not to be removed out of the Parish, or are  
‘there lawfully settled, may by the consent of the Parish, or by the Church-  
‘wardens and Overseers of the Poor, or the greater part of them, be placed  
‘as Inmates for a time, *Resol. 34.*

*Cottages.*

‘Or by the leave of the Lord of any Waste, they are to have houses  
‘bought for them on the Waste, according to the Statute, 43 *Eliz. cap. 2.*

§. 7.  
*Relief.*

3. For relieving such Poor, amongst them as are poor and impotent,  
or not able to work.

‘But this relieving of Poor, and impotent persons, must be convenient,  
‘and such as that they neither be forced to beg, or steal, nor so little, as  
‘that it may be a lingring death to them.

§. 8.  
*Tax.*

And to these purposes, the said Overseers are enabled to raise weekly,  
or otherwise by Taxation of every Inhabitant, Parson, Vicar, and other;  
and of every Occupier of Lands, Houses, Tithes, Mines, or saleable Under-  
woods (proportioning them to an annual benefit, &c.) in the same Parish,  
such competent sums of Money as they shall think fit, therewith to pro-  
vide a convenient stock of some Ware or Stuff, to set the Poor on work,  
and also competent sums of Money towards the necessary relief of their  
lame, impotent, old, blind, and other Poor not able to work; and for the  
putting out of such Children (as aforesaid) to be Apprentices.

‘The Parson Presentative having the Tenth or Tithes of the Parish, it  
‘is equal that he should pay the tenth part of the rate to the Poor of the  
‘Parish; or shall bear to the Taxation of the Poor according to the reason-  
‘able value of his Parsonage; having consideration to just deductions, and  
‘so of the Vicar Presentative, *Resol. 33.*

‘And concerning Parsonages impropriate, the Tithes are to be con-  
‘sidered in their several kinds; for Tithe-corn is usually paid to the Parson,  
‘and small Tithes of all kind to the Vicar.

‘But for Pasture-grounds, Parks, Wood-grounds, Commons, and  
‘Heath-grounds, &c. These in many parts of this Realm do exceed the  
‘Corn, or Arable ground, and may pay little or nothing, either to the Par-  
‘son or Vicar: So as in reason it seemeth such Parsonages Presentative or  
‘Impropriate, should be charged only for the Tenth of such Profits as they  
‘receive, and not for the Tenth of the whole Parish.

‘For other Men how they shall be rated. See *Chap. 50. & 53.*

§. 9.  
*Toll.*

“Toll of Markets seem also taxable, touching which in *Michaelmas*  
“Term 27 *Car. 2.* hapned this Case in the Town of *Wickham* in *Bucks.*  
“having much Poor, and there being in the Town a considerable Market.  
“The Toll whereof belonging to the Corporation there, was worth 60 *l.*  
“per annum, which the Overseers had Taxed, and the Major and Justices  
“refused to sign, and allow the Tax, pretending it was not Taxable. The  
“Overseers



"Overseers and Justices, the last *Trinity* vacation, attended the Lord Chief Justice *Hales* for his opinion, who said, He conceived it Taxable within 43 *Eliz.* Yet the Justices would not sign and allow the Tax: Of which, Complaint being made to the Court of *Kings Bench*, a Rule was for the Major, &c. to attend, and he attended accordingly; and he observing the Court to be angry, promised to sign and allow the Tax; and the Court ordered him to pay the Overseers the charges of their prosecution; and *Hales* said, for such a refusal a *Quo. Warr.* would lie. Which Case I have inserted, as well to shew what is Taxable, as to inform Justices of Peace of their duty. This Case hapned *Michaelmas*, 27 *Car. 2.*

The Office then of these Overseers consisteth principally in two things. §. 10.  
Overseers  
duty.

1. In Taxing Contributions of Money for the relief of the Poor.

2. In the disposing thereof according to Law, and good discretion.

And in these Taxations, there must consideration be had, first to equality, and then to Estates.

Equality, That Men may be equally rated with their Neighbors, and according to an equal proportion.

Estates, That Men be rated according to their Estates of Goods known, or according to their known yearly value of their Lands, Farms, or Occupying, and not by estimation, supposition, or report. Also hereint the charge of Family, Retinue, and Countenance, is in some measure to be regarded: For if one valued at 500 *l.* in Goods, hath but himself and his wife, and another estimated at 1000 *l.* hath Wife and many Children, &c. the first Man by reason is to be rated as much as the other; and so of Lands *Tamen quere*, what the Law is in such Cases.

"Touching the Taxations of Mens Estates, these Rules are to be observed. §. 11.

1. If a Man live in the Parish where his Lands lie, and doth Demise those Lands to others, the Poores Tax in that case ought to be charged upon the Tenant, and not on the Land-lord, in respect of the Tenants occupation thereof.

2. A Man having Lands in other Parishes then where he lives, the same being in Lease, or not in Lease, he is to be taxed in the Parish where he lives, according to his visible Estate there, and not for his Land or Rent in another Parish. And both these points were resolved by *Hutton* and *Crook*, Judges of Assizes, at *Lent* Assizes in *Lincoln*, upon application to them made by *Sir Anthony Earby*, against the Inhabitants of the Town of *Boston*; and this they said was agreed upon by all the Judges of *England* upon a Reference to them.

"What shall be said to be a Parish within 43 *Eliz. 2.*

"R. If there be an ancient Parish, and an ancient Village within that Parish; which Village had an ancient Church, and those within that Village have had Parochial Rights, and chosen Church-wardens and Overseers of the Poor, and have been separately taxed ever since 43 *El.*

2. for relief of the Poor within that Village. This is a Parish within 43 *Eliz. 2.* and Taxes may be made and levied within themselves: And all this was resolved in a Cause between *Hilton* and *Paul*, *M. 3 Car. 1.* in the *Common Pleas* upon a special Verdict there found, between the Parish of *Hinkley*, in the County of *Leicester*, and the Village of *Stoke-Goldingham* within that Parish. *Cro. Car. p. 65.* And the like was also resolved *H. 10 Car. 1. B. R.* between *Nichols* and *Walker*, between the Parish of *Hatfield*, and the Village of *Tatridge*, *Jones Rep. p. 356.* and *Cro. Car. p. 286.*

§. 12. "The distinction of Parishes in England, I find attributed to *Theodorus*, Archbishop, who died *An. Dom.* 690. (almost One thousand years since; for thus it is written of him, as it is cited out of an *MS.* *Excitabat fidelium devotionem & voluntatem in quarumlibet provinciarum Civitatibus, necnon villis, Ecclesias Fabricandi, Parochias distinguendi; assensu regios procurando, ut si qui sufficientes essent, & ad Dei honorem pro voto haberent super proprium fundum Ecclesias construere, earundem perpetuo Patronatu gauderent, &c.* Beda *Ecclesiast. Historic.* notis Wheel. p. 399.

§. 13. The causes of } Set the Poor at work by a stock, &c.  
these Taxations are } To } Relieve the impotent, } by Money.  
three. } Put forth Apprentices, }

And this last, *scil.* their putting forth and taking of Apprentices, may well be termed a special work, and seminary of Mercy.

Apprentices.

But in putting forth of these Apprentices, there must be regard had to the Master, the Child, and the Parents.

The Master, *scil.* his ability, and honesty; otherwise by some device or hard intreaty, they may provoke their Apprentices to depart, or run away.

Secondly, His Trade or Faculty, lest the Apprentice consume his time without learning any thing: For the word Apprentice cometh of the word *apprendre*, *id est*, *ad-discere*, or *discere*, and sheweth, that they are to be bound to, and brought up in, taught, and instructed by the Master in some Art, Mystery, or Trade.

To these two, the Justices of Peace must have an eye.

And withal, the Justices at their Monethly Meetings should do well (once in three or four quarters) to cause the Officers of every Town to bring them a note in writing of all the Poor in the Town which are overburthened with Children, and of the names and ages of their Children; and also a note of the names of all those in their Parish that are fit to take Apprentices; and so from time to time to put out and place the Children.

The Child, *scil.* to put them out timely, and while they are young and tractable (so as they be above the age of seven years) otherwise by reason of their idle and base educations, they will hardly keep their Service, or employ themselves to work.

And by the Statute 7 *Jac. cap.* 3. Children which be above the age of fifteen years, are not thought fit, or allowed to be first bound out as Apprentices; but are to be forced to work, or to go to service; and if they refuse, they are to be sent to the House of Correction, or bound over to their Good Behavior, and so to the Assises or Sessions of the Peace.

So all single persons under the age of thirty, being warned by two Justices of Peace, to put themselves into service by a day prescribed them, if they do not accordingly, but shall still continue living idly out of Service, not having visible means of their own to maintain them, they are to be sent to the House of Correction, or bound over, &c. *ut supra.* Co. Rec. 17.

The Parents, *scil.* to take away such as are brought up to live idly and loosely, or else such as are a burden to their Parents, and whose Parents are least able to relieve them.

Again, concerning the Masters; all persons of ability are compellable to take Apprentices according to this Statute; yea, if they be of ability, though

‘ though they have but a house, or sleeping place in the Town, they are chargeable.

‘ And the Statute of 43 *Eliz.* 2. which saith, That the Church-wardens and Overseers of the Poor, shall put out Children to be Apprentices, doth necessarily imply, that such as are fit, must necessarily receive such Apprentices, *Resol.* 1.

‘ Yea, every Man who by his Calling, and Profession, or manner of living, entertaineth, and must have use of other Servants of the like quality, must entertain such an Apprentice: Wherein notwithstanding discretion must be the guide upon consideration of Circumstances; *Resol.* 3.

‘ And every able or wealthy person that liveth privately, though he hath no use of a Servant, yet he must contribute, and may be taxed towards the putting forth of Apprentices, as to other Charges for the provision of the Poor, *Resol.* 4.

‘ And Clergy-men are not herein exempted, but may have Apprentices put to them; and this was the opinion of all the Judges, upon two several references to them lately made from the Kings Majesty (as I have been credibly informed.) Or at least they are chargeable to contribute to the putting out of Apprentices. See the words of the Statute of 43 *Eliz.* c. 2. *hic antea.*

Note also, That as the Statute inableth the Church-wardens and Overseers (with the consent of two Justices of Peace) to put out Apprentices, so it doth inable them to place those Apprentices with Masters; for without Masters there can be no Apprentices. And the said Justices may compel all such as be of ability, to take such Apprentices (according to their discretion,) and if any such Master shall refuse to take such Apprentice so to him appointed, the said Justices may bind such Master over to the next General Gaol-delivery, there to answer such default. And this was the direction of Sir Henry Montague Knight, Chief Justice of the Kings Bench, at Cambridge Assizes, *Anno Dom.* 1618. ‘ wherewithal agreed, Sir Nicholas Hide, and Sir Francis Harvey, Judges of Assize at Cambridge Summer Assizes, *Anno* 1627. And if he refuse to take such Apprentices, or to give Bail to appear at the next General Gaol-delivery (or Quarter Sessions) he may be sent to the Gaol, there to remain, until he will give such Bond, *Resol.* 6.

Also the Statute of 43 *Eliz.* c. 2. seemeth to warrant as much, as the words of which Statute to this purpose, are thus. Be it further enacted, That it shall be lawful for the Church-wardens and Overseers, or the greater part of them (by the assent of two Justices of Peace) to bind any such Children to be Apprentices, where they shall see convenient. *Plus hic antea.*

Or else the said Church-wardens and Overseers (with the consent of the said Justices, as it seemeth) may impose upon such Master (refusing to take such Apprentice) a competent sum of Money, for the putting out of such an Apprentice elsewhere. And upon the Masters refusal, to pay such Money, two such Justices may take their Warrant to levy the same by Distress and Sale of the offenders Goods, &c. See *Poulton* 2. 4.

‘ Or the Refusers to take Apprentices, may be presented and indicted for the same, upon the Statute of 43 *Eliz.* at the Assizes, or Sessions of the Peace, and upon such indictment they may be fined and imprisoned, *Resol.* 7.

“ This matter although long used, and here so positively asserted, deserves consideration: For as in maintenance of this opinion, several  
“ opinions



“opinions of Judges of Assizes may be urged with the continual practice  
 “of most Justices of Peace, and some of them very learned, ever since  
 “43 *Eliz.* And the Resolution of the Justices, falsely so called, for the rea-  
 “sons hereafter expressed. So on the other side, it may be truly said,  
 “That this matter was never yet judicially and solemnly resolved; for as  
 “I have heard that ancient learned Judge, Justice *Twisden* say, That in  
 “the Lord Chief Justice *Rolls* time one having removed an order, where-  
 “by he was charged to take an Apprentice into the *Kings Bench*, appeared  
 “thereupon; and upon several motions against him, there he was often  
 “chid, and went away, as he said, with a scratched face; but nothing more  
 “was done thereupon, and the Reasons of the other side are very weighty  
 “against such Imposition. It is one purpose of the Poores Tax, mentioned in  
 “the Statute of 43 *Eliz.* 2. to raise a stock (amongst other things) for  
 “putting out of Poor Children to be Apprentices; and the words that in-  
 “sue in that Act, That it shall be lawful for the said Church-wardens and  
 “Overseers, by the assent of two Justices of Peace, to bind any such Chil-  
 “dren as aforesaid to be Apprentices, where they shall see convenient, &c.  
 “must needs be understood of doing it with, and out of such stock; and  
 “that Clause doth only inable the Officers with such stock to bind them  
 “out, for otherwise there had been no compulsory power given to the  
 “Officers, to oblige the Children to be bound, or the Parents to suffer it:  
 “And the Statute of 1 *Jac.* 25. continuing the Statute of 43 *Eliz.* adds  
 “this, That all persons to whom Overseers shall bind any Children Ap-  
 “prentices, may take, receive, and keep them as Apprentices; which, it  
 “seems, was doubted soon after the making of 43 *Eliz.* Which need not  
 “have been doubted, if the Statute of 43 *Eliz.* had intended or wrought  
 “such Compulsion to take, besides the putting out Children by stock, is  
 “the most equal way; for thereby every one pays his equal proportion:  
 “Also the Statute of 43 *Eliz.* mentions not what age such Children must  
 “be of, that are so put out; nor provides any appeal or relief for the  
 “party, to whom such Child should be put Apprentice, being grieved  
 “thereby, as it hath done for a Man that is over taxed. Also the Autho-  
 “rity seems to be too great, and the inconvenience too manifest; for a  
 “Man that wants no Servants, shall by this means be compelled to keep  
 “one or more; and a Child perhaps, neither cleanly nor honest, obtruded  
 “on a Gentleman for so long a time, as till their age of twenty one or  
 “twenty four. And it is well known, and easily apprehended, that such  
 “persons, as Overseers usually are, would prove partial to those of their  
 “own condition, and be unequal in such Impositions on Gentlemen. But  
 “this matter being directly under consideration of the Court of *Kings*  
 “*Bench*, in the Case between *Kang* and *Pyne*. A Case being made and  
 “agreed, and the Court have resolved to confer with the rest of the Ju-  
 “stices and Barons thereupon, we may well hope for a speedy decision of  
 “this so long controverted point.

“But there is no necessity that any Money should be given with Ap-  
 “prentices, for that must be left to the discretion of the Church-wardens  
 “and Overseers, all circumstances of age and ability being considered:  
 “And if they cannot agree with the Party, then the Justices of Peace ad-  
 “joyning; or in their default, the Sessions of Peace are to determine this,  
 “*Resol.* 2.

§. 15.  
 Apprentices.

“An Apprentice put to a Man in regard of a Ferm, when his Lease ex-  
 “pireth, his Apprentice must go still with the Fern, if the first Master will.  
 “Otherwise where the Apprentice is put to a Man in regard of his ability,  
 “or for other respect.

“Where

Where the Master of the Apprentice dieth, I have known it ordered by the Judge of Assize, that the Executor having Assets left him, shall keep the Apprentice, or shall otherwise provide for him: Otherwise Apprentices, as also Servants, are by Law settled in that Parish (where they were last) and if they become impotent, there the Parish must bear the adventure, after their time, or term of Service be lawfully ended, *Resol. 25.*

If the Parents of Poor Children shall refuse to suffer their Children to be put forth (without good cause shewed) such Parents also may be bound over by the Justices to answer their said default: And if the Apprentices shall refuse, the Justices may send them to the House of Correction, *Quoniamque, &c.*

And if the Parents of such Poor Children being so bound, shall intice their Children away (themselves not being able to maintain them) such Parents may be committed to the House of Correction, *Resol. 7.*

Note, That if the Master shall put his Apprentice into apparel, it is a gift in Law, and he cannot after take it away, though he should part with his Apprentice, *&c. Br. Transf. 93.*

An Apprentice which runneth from his Master, or shall be otherwise disordered, may be sent to the House of Correction, by any Justice of Peace; or else by order from the Sessions. See *hic, cap. 31.*

Two such Justices shall take the account of such Overseers, at the end of their year, and of the Church-wardens in every of these particulars following. §. 16.  
The Overseers Account.

1. Of all sums of Money by them received, or rated, and not received.

2. Of all such stock of Ware or Stuff, as they, or any of the Poor have in their hands.

3. What Apprentices they have put out and bound, according to the Statute.

4. What Poor they have set at work, or relieved.

5. Whether they have suffered any of their Poor to wander and beg out of their Town, or in the High-ways, or in their Town, without their direction. See for this 39 *Eliz. 3 & 4. & Lamb. 206. Resol. 15.*

6. Whether they have Monethly met to consider of these things.

7. Whether they have assessed the Inhabitants and Occupiers of Lands, *&c.* in their Parish, *scil.* All such as are of ability, and with indifferency.

8. Whether they have endeavored to levy and gather such Assessments.

9. Whether they have been otherwise negligent in their Office; within which words also there seemeth to lie included, 'if they have relieved the impotent', or shall neglect to execute the Justices Warrants to them, or any of them directed, for the levying of any forfeiture, according to this Statute. See *P. 2. & 12.*

All sums given to bind out Apprentices, shall continue and be imployed to that use, and no other, by the persons following, except the givers have otherwise disposed it. *Viz.* By all Corporations of Cities, Boroughs, and Towns Corporate; and in Towns and Parishes not Corporate, by the Parson or Vicar, with the Constable or Constables, Church-warden or Church-wardens, Collectors, and Overseers of the Poor, or the most part of them; and they shall have the nomination and placing such Apprentices, and the guiding and imployment of such Moneys: And if they, or any of them, shall wilfully neglect, or forbear

§. 17.  
Charity for Apprentices.

"bear so to do, they and every of them shall forfeit 3 l. 6 s. 8 d. One half to the poor, the other to the prosecutor. By Action, &c.

"The Master, or Mistress, or Dame, receiving such Money with such Apprentice, shall be bound with two Sureties to the Corporation; or the person having the ordering thereof, conditioned to repay the Money at the end of seven years, or three Moneths after; and if the Apprentice die within one year after his death; and if the Master, &c. die within seven years, then within one year after his death, such Money shall be put out again and employed within three Moneths after it comes in. And if there be no Poor Children to be put out, then the Poorest Children of the Parish adjoining; and the Poorest Children shall always be made choice of, and none to be above fifteen years of age.

§. 18.  
Accompt.

"The Persons so intrusted, shall once every year at Easter, or within a Moneth after, give to 4, 3, or 2 Justices, dwelling in or next the Town, &c. an accompt of all Moneys so employed of securities taken, and what is in their hands: And at the time of the accompt, or a Moneth after deliver up to such as shall succeed them the Obligations and Money.

"In case of any breach of trust or mis-employment, the Lord Chancellor may grant Commissions, &c.

"*Quere*, What authority the Justices have by this Statute, for it seemeth they have no authority compulsory over the persons accompting, but only to take their accompts. And as they find the Money mis-employed, or not employed, to represent the same to the Lord Chancellor, &c. That Commissions may issue as that Statute directs.

§. 19.  
Refusal to  
Accompt  
and pay:

Now if the Church-wardens, or either of them, or any of the Overseers, shall refuse to make and yield a true and perfect account to the said Justices of all such sums of Money, and of all such stock, as aforesaid; any two such Justices may commit them to the common Gaol, there to remain without Bail, till they have made a true accompt, and satisfied and paid (to the new Overseers) so much of the said sum and stock, as upon the said account shall be remaining in his (or their) hands, &c. And if they make a false accompt, they may be bound over to the Assises, or Sessions, and there an Indictment may be preferred against them.

Also, if any of the Church-wardens or Overseers, shall refuse or deny to pay and deliver over to the new Overseers, the arrearages (sums of Money or Stock) which shall be in their hands, and due and behind upon their account to be made as aforesaid; any two such Justices of Peace may make their Warrant to the present or subsequent Church-wardens and Overseers, or any of them, to levy the same by Distress and Sale of the offenders Goods, rendring to the Parties the overplus; and in defect of such Distress, any two such Justices of Peace may commit him or them to the common Gaol, there to remain without Bail, until payment or delivery of the said sum, arrearages and stock be made.

"But if persons assessed die before the same be collected, without default of the Overseers, as it hapned by reason of the Sicknes in 1638. A new rate and assessment is to be made to supply the same. Ord. 27 Aug. 14 Car. Lib. Sess. Pa. Middlesex.

If any such Stock shall be in the hands of any the Poor to work, and such Poor shall refuse to deliver the same, it seemeth any two such Justices may make the like Warrant to levy the same by Distress, and in defect thereof may commit such offenders, as aforesaid.

And as for other the negligences of the Church-wardens and Overseers in their Office, or in the execution of the Orders aforesaid, every of them



P. 12. them making default, shall forfeit for every such default 20s. (but it seemeth such default must be proved, either by the offenders confession; or by examination of witnesses) which Forfeitures shall be levied "by the Churchwardens and Overseers, or one of them", by Warrant from any two such Justices of Peace, by Distress and Sale of the offenders Goods &c. Or in defect of such Distress, it shall be lawful for any two such Justices of Peace to commit the offender to the Common Gaol, there to remain without Bail till the said Forfeitures shall be paid; and the said Forfeitures shall be employed to the use of the Poor of the same Parish.

The refusers to pay their Rates or Money assessed upon them; and Overseers having Money or Stock behind upon their accompt, their Forfeitures shall be levied by the new Overseers and Church-wardens, or one of them, by warrant from two Justices of Peace, &c. But for other Negligences, or Forfeitures of the Overseers and Church-wardens, the Justices shall make their Warrant to the Constable to levy the same.

Two such Justices of Peace are to allow the cause or excuse of such Overseers, as shall not meet every moneth, to consider of the premises, or as shall be otherwise negligent in their office, *Lamb. edit. 1614. pag. 360.*

Two such Justices may make their Warrant (as well to the present as sequent Overseers and Church-wardens, or to any of them) to levy all such sums of Money, and all Arrearages, (of every one that shall refuse to contribute according as they shall be assessed) by Distress and Sale of the offenders Goods, (rendring to the party the overplus.) And in defect of such Distress, such two Justices may commit him or them to the Common Gaol, there to remain without Bail, till payment be made of the said sum and arrearages. *§. 21. Levy of Taxer. Refusers to pay their rates*

P. 3. If the said Justices do perceive that any Parish is not able to relieve their Poor, then any two such Justices of Peace may Tax and Assess any other persons within the Hundred (where the said Parish is) to pay such sums of Money to the Overseers of the said poor Parish for the said purposes, as the said Justices shall think fit, according to the intent of this Law. *§. 22. Parishes not able*

Or if the Parish be not able to provide for the Poor Children of the same Parish, the Justices may provide Masters for them in other Parishes within the same Hundred; and if the Hundred be not able, then in the rest of the Countrey, as for other provision for the Poor, which must be at a Quarter Sessions. *Resol. 5.*

He that, without the consent of the Parish, shall bring any Poor to any Town, which are burthensome to the Town, may be raised in his Rates towards the relief of the Poor of that Parish. *Sir Nicholas Hide. §. 23. Charging Parishes.*

Yea, Landlords, or owners, or Parishioners, taking into their Houses poor persons (out of the Parish) like to burthen the Parish, if the Landlord will not secure the Parish, &c. Then may he be charged towards the relief of the Poor of that Parish, to the value of his Rent reserved; or according to the charge they so bring into the Parish. See *Resol. 35.*

Note, That Orders of this nature in the Sessions Book of *Middlesex*, are very frequently made in presence; and by the Justices of the Benches at *Westminster*. Vide that 23 March, 13 Car. where a poor person was sent back to the house of Mr. *Nichols*, to remain there without paying any Rent.

- §. 24. *Appeal.* If any persons find themselves grieved with any Tax, or other act done by the Overseers, or by the said Justices of Peace, they are to be relieved at the Quarter Sessions. *P. 7.*
- Corporate Towns.* Head-officers of Cities and Corporate Towns (being Justices of Peace) have the same authority within their limits, as herein is limited to Justices of Peace of the County, &c. And no other Justice of Peace are to enter or meddle there. *P. 9.*
- §. 25. *Parishes in two Liberties.* If any Parish shall extend into two Counties, or part thereof do lie in any City or Corporate Town where they have Justices, then the Justices of every County, &c. shall intermeddle only within their own limits: And every of them respectively within their limits, are to execute this Law concerning the nomination of Overseers, binding of Apprentices, giving Warrants to levy Taxations unpaid, taking account of Overseers, and committing such as refuse to account, or to pay their arrearages: And yet the said Overseers shall without dividing themselves, execute their office in all places within the said Parish, but shall give up several Accompts, &c. *P. 10.*
- §. 26. *Parents.* The Father, and Grand-father, and Mother, and Grand-mother, and the Children, and Grand-children of every poor impotent person, or other poor person not able to work, being of sufficient ability, shall relieve such poor persons in such manner as the Justices of Peace (of that County where such sufficient persons dwell) at their general Quarter Sessions shall assess; upon pain that every one failing therein, forfeit twenty shillings for every moneth; the said forfeiture to be levied by the Church-wardens and Overseers, or one of them by Warrant from any two such Justices of Peace (the one being of the *Quorum*) within their limits, by Distress and Sale as aforesaid; and in defect of Distress, any two such Justices may commit the offender to prison, there to remain without Bail, till the said Forfeiture be paid. And the same Forfeiture shall be employed to the use of the Poor of the same Parish. *Resol. 16. 17. p. 4.*
- "The Reputed Grand-father or Grand-mother seem not to be within this Statute, for a Bastard is *filius populi*. *Reeves Case. M. 7 Car.* *P. 121. 43 Eliz.*
- "If the Child live in the County of *Middlesex*, and be maintained by the Parish there; and the Grand-father, &c. live in the County of *Suffolk*, the Justices of *Middlesex* can make no order therein; but the Justices of the Peace of the County of *Suffolk*, must make order to charge, &c. *Ibid. 346*
- "If the Grand-mother be a person of ability, and then marries, the person with whom she marries is a Grand-father within this Statute; for by the Marriage, all her Goods are given to the Husband, but with this difference; if the Grand-mother at the time of the marriage, were of ability, otherwise not. *Drapers Case*, also *Gerrards Case*. But if the Wife having nothing to bring her Husband in marriage; but after by her industry her Husband becomes a very rich Man, the Husband shall be charged by *Whitlock*, but *Crook* to the contrary: But they both agreed, That if an Estate descend to the Wife after marriage, the Husband shall be charged. *Ibid. 346*
- 'And the Father also may be compelled to allow maintenance to his sons Wife (the Husband being absented) as was done in the case of one *John Ball*, by *Ord. 2 Sept. 15 Jac. lib. Sess. pa. Mid.*
- Now for the better furtherance of this so needful and charitable a service, and for the better help as well of the Justices of Peace, as of the Overseers, &c. I thought it not amiss to set down here certain Resolutions and

and Advices of the Judges (as I find them in Mr. *Lambard*) together with certain other Observations to this purpose.

Refol. 20. If there be but one Church-warden in the Parish, he sufficeth with the other Overseers. §. 27.

Refol. 8. If the Parents be able to work, and may have work, they are to find their Children by their labor (and not the Parish :) But if they be overburthened with Children, it shall be a very good way to procure some of them to be placed Apprentices, according to the Statute. And such Apprentices would be put out to Husbandry and Houſwifery. *Resolutions. Parents able.*

Young Children, whose Parents are dead, are to be set on work, relieved, or maintained at the charge of the Town where they were dwelling at the time of the death of their Parents, and are not to be sent to their place of birth, &c. For if the Parents were not Rogues, we may not make the Children Rogues, except they wander abroad and beg. This was the direction of *Flemming*, Chief Justice, in a Case between *Weston* and *Cowledge*, Anno 11 Jac. Regis. *Children.*

A Woman being delivered of a Bastard Child in one Parish, after goeth into another Parish with her Child, and becometh a Vagrant, and so is sent to the place of her birth, her Bastard Child being under the age of seven years, this Bastard Child must be placed with the Mother so long as it is within the condition of a Nurse-child, which shall be till seven years of age; and then it is fit to be sent to the place of its birth to be provided for, the Mother or Reputed-father not being able. And the Parish where the Child is born, shall not be forced to contribute to the charge, as long as the Mother lives, and the Child be under seven years old. *Refol. 23.*

Refol. 7. If any (not being Rogues) shall travel with their Children through a Town, and the Father or Mother die, or run away, that Town is not bound to keep their Children, nor to send them away but only in Charity, except they become wandring Beggars.

A Travelling-woman having a small Child sucking upon her, is apprehended for felony, and sent to the Gaol, and is after arraigned and hanged; this Child is to be sent to the place of its birth, if it can be known; otherwise it must be sent to the Town where the Mother was apprehended; for that, that Town ought not to have sent the Child to the Gaol (being no malefactor,) and so was it delivered by Sir *Nicholas Hide*, at *Cambridge*, Lent Assizes, Anno 3 Caroli Regis.

Refol. 10. Such persons as be of any Parish, and have able bodies to work, if they refuse to work at such wages as are taxed, or commonly given in those parts, are to be sent to the House of Correction, and not to their place of birth, or last dwelling, by the space of a year. But if they have any lawful means to live by, though they be of able bodies, and refuse to work, yet they are not to be sent to the House of Correction. *Refusing to work.*

Refol. 15. 39 Eliz. None may be suffered to take relief at any Mans door, though within the same Parish, unless it be by the order of the Overseers; neither may any be suffered to beg by the Highway, though in their own Parish. *Begging.*

Refol. 9. No Man is to be put out of the Town where he dwelleth, nor to be sent to their place of birth (or last habitation) but a Vagrant Rogue; nor to be found by the Town, except the party be impotent; but ought to set themselves to labor, if they be able, and can get work: If they cannot get work, the Overseers must set them to labor. *Settlement.*

"One *Winde* and his Wife lived at *Laystas*, and used a House and Land which was given the Woman by her Brother, her Brother turned



"her out of it; and thereupon they went to *Kimmalton*, and took a  
 "House there, and lived in it a year; and at the instance of the Parish of  
 "K. the Landlord at the years end turned him out of the House: He com-  
 "plained to the Justices, who ordered the Parish of K. to provide him a  
 "House; and for not doing it, were in contempt. And upon complaint  
 "at *Hereford* Lent Assizes, 7 Car. 1. *Whitelocke*, Justice of Assizes, dis-  
 "charged the Overseers of their contempt, and discharged the Order  
 "made upon K. by the Justices, as being against Law; for that W. was  
 "not a poor or impotent person within 43 Eliz. 2. And the Justices had no  
 "power by that Law to compel and to provide a House for him, for he  
 "might provide one himself. *Inter Parochias de Laystas & Kimmalton.*  
*Bast. part. 2. p. 247.*

And so of them that have or shall have Houses, when their Estates be  
 expired; and servants, whose times of service are ended, though they can-  
 not get Houses; for they must provide themselves Houses anew, if they  
 be not impotent. *Ibidem.*

So that such persons, whose Estates of their Houses be expired, and  
 servants when their service is ended, they shall not be put out of the Towns  
 where they so last dwelt or served: Neither are they to be sent from  
 thence to their place of birth or last habitation, but are to be settled there to  
 work being able of body, or being impotent, are to be there relieved;  
 and yet if such persons shall wander abroad begging, out of that Parish,  
 then they may be sent as Vagabonds (from the place where they shall be  
 taken wandering or begging) to their place of birth, &c.

But for the placing and settling of these poor people (who now for  
 want of Charity are much sent and tossed up and down from Town to  
 Town, and from Countrey to Countrey) it hath been holden by some, that  
 it is in the power of the next Justice of Peace to give order therein, and  
 that upon appeal from him, the Justices of Peace at the Quarter Sessions  
 may fully take order therein, and that their order made in Sessions will not  
 easily be avoided.

But Sir *Francis Harvey* at Summer Assize at *Cambridge*, An. 1629. did  
 deliver it, That the Justices of Peace (especially out of their Sessions)  
 were not to meddle, either with the removing, or settling of any Poor,  
 but only of Rogues.

If a Man hireth an House in A. and being there with his Wife and  
 Children, he afterwards shall bind himself as a servant with one dwelling  
 in B. yet are not his Wife and Children to be sent to B. or placed there, but  
 are to remain still at A. where they were once settled. Otherwise, if the  
 Husband hath hired an House in B.

A Man with his Wife and Children takes a House in one Parish for a  
 year, and before the end of the term is put out of possession, and then go-  
 eth into another Parish; where the Woman in a Barn, &c. is delivered of  
 a Child: This thrusting out of Possession was an illegal unsettling (which  
 the Law forbiddeth, for that none must be forced to turn Vagrant) and  
 therefore such a one must be returned to the Town and Parish where he  
 or she was last lawfully settled, and the Child also born in the time of this  
 distraction must be sent with them, *Resol. 24.*

A Woman unmarried being an hired servant in A. and is there gotten  
 with Child; after her time of service expired, she goeth into another  
 Parish, and is there hired in service, or is there otherwise settled by  
 the space of one moneth, and is then discovered to be with Child, here  
 she is not to be sent to the place or Parish where she was begotten with  
 Child; but to the place where she was last lawfully settled, *Resol. 12.*

' A Woman servant unmarried is gotten with child, and then goeth out of her Masters service, before or after it is discovered that she be with child, and the Reputed father be run away, or is not able to free the Parish; here if the Master hath legally discharged his house of such a servant, he is no more bound to provide for her then any other, *Resol. 13.*

' But if she be not lawfully discharged out of her Masters service, nor her time of service with him expired, her Master may be forced to keep her still, or otherwise provide for her, till her time of service be expired, or that he be legally discharged of such servant.

' If a Woman being with child procureth her self to be retained with a Master who knoweth nothing thereof: This is a good cause to discharge her of his service, *Resol. 22.*

' And if a Woman servant be begotten with child, during her service, this is a good cause to discharge her, *ibid.*

' But in the three former cases, the Master must not turn away such servant of his own authority, *Resol. 22.*

' And in these last three cases, the charge as a misfortune, falleth upon the Parish, which they must bear as in other cases of casual impotency. See *Resol. 22.*

A Maid servant gotten with child at *A.* by her fellow servant (or by another young Man of the same Town) after both their times of service are expired, and they marry, and then the young Man is retained at *B.* then the Woman is delivered of her child, she with her child are to be sent to the Father at *B.* and there they are to be settled.

' Now what shall be accounted a lawful settling.

' Note, That every one who is settled a Native, a Householder, Sojourner, an Apprentice, or a Servant retained for one moneth, at the least, without a just complaint made to remove him or her, shall be held to be settled, *Resol. 26.*

' Yet an abode by the space of a moneth, must not be to live or keep privately, sometimes in one house, sometimes in another; nor to be an abode by reason of sickness, or the like, as Lameness, Lunacy, &c. Nor to a Nurse-child, or a Scholar at the Grammar-School, or at the University; or Persons sent to an Hospital, House of Correction, or to the Common-Gaol; but their settling is where their Parents are settled, *Resol. 32.* or themselves last lawfully settled.

' As for Children born in Common Gaols, and Houses of Correction, their Parents being Prisoners, are to be maintained at the charge of the County, *Resol. 32.*

' But note, If one be only lawfully retained in service, or hath but hired an house, or be otherwise lawfully settled, the Law unsettleth none so settled; nor permitteth it to be done by practice or compulsion; and such as shall use any indirect means to hinder a Poor Man from hiring an house, may for such disturbance be indicted upon the Statute, for causing them to turn Rogues.

Note, (by an old Law) a stranger, or he which cometh Guest-wise to an house, and there lieth the third night, is called an *Hogenhyne* (or *Agenhine*) and after the third night, he is accounted one of his family, in whose house he so lieth; and if he offend the Kings peace, his host must be answerable for him. *Termes de Ley.*

' *Secundum antiquam consuetudinem dici poterit de familia alicujus qui hospitatus fuerit cum alio per tres noctes, qui prima nocte dici poterit Uncouth, secundo Gult. tertia nocte Hogenhine. Bract. fol. 124. b.*

\* And *Minsb. verb. Hogenbyne*, third, and *Uncontb* saith, That *Uncontb* signifieth *incognitus*, and is used in ancient *Saxon* Laws for him that cometh to an Inn Guestwise, and lieth there for two nights at the most; and that by the Laws of *Edward*, and of the Conqueror, *Hospes trium noctium*, if he did any harm, his Host was answerable for the harm, as for one of his own family; and that if he tarried any longer, then he was called *Hogenbyne*, or *Agenbyne*, that is, *Familiaris*. So it seemeth in those times, that to lodge in one place three or four nights together, was counted a settling.

Such as shall remove or put any out of their Parish, that be not to be put out; this is against the Statute concerning the relief of the Poor, and finable. And if any have been so sent, they may be sent back again. Resol. 11.

Now this Fine seemeth to be by force of the Statute 39 *Eliz. c. 4.* and to amount to five pounds, and is to be levied by Distress and Sale of the offenders Goods, upon a Warrant under the Hands and Seals of any two Justices of Peace, either upon the confession of the offenders, or else upon the testimony of two sufficient witnesses. P. Vag. 11.

§. 30. All such Persons as in any wise shall disturb the execution of this Law, concerning Rogues, or the relief, or settling of Poor impotent Persons, shall forfeit five pounds; and any two Justices of Peace may bind such offenders to their Good Behavior; and may also by Warrants under their Hands and Seals, cause the said five pounds to be levied by Distress and Sale of the offenders Goods, as aforesaid: Which forfeiture the said two Justices also by their discretion, may order to be employed to the relief of the Poor where the offence shall be committed, or to the maintenance of the House of Correction, &c. *Quere* for this forfeiture, for that the Statute 39 *Eliz. c. 3.* made for the relief of the Poor, is expired. 39 *Eliz. c. 3.* P. Vag. 11.

§. 31. Removal. "Upon complaint made to any Justices of Peace by the Church-wardens or Overseers, within forty days, of any person, likely to be chargeable coming to settle in a Tenement under 10 *l. per annum*. Two Justices *quorum unus* of that Division where he comes to inhabit, may by Warrant remove and convey him to the Parish where he was last legally settled, as a Native Householder, Sojourner, Apprentice, or Servant, for forty days, at the least, unless he give security for the discharge of the Parish, to be allowed by the said Justices. 14 *Car. 2. c. 12.*

Appeal. "The Persons thinking themselves grieved, may appeal to the next Sessions who shall do them right. 14 *Car. 2. c. 12.*

Harvest. "Any Person may go for Harvest-work, or other work, out of one County into another, so as they carry with them a Testimonial under the Ministers hand, and the hand of one Church-warden, and one Overseer, that he hath a dwelling house there, and hath left a family there, or otherwise as the condition of the person shall require; and if he shall not return when his work is finished, or shall become impotent: This shall not be accounted a settlement, but two Justices of Peace, may convey him back under the penalties in that Act. 14 *Car. 2. c. 12.*

Not going. "If such Person shall refuse to go, or shall not remain in the place where he ought to be settled, but shall of his own accord come back to the place from which he was removed. Two Justices of Peace may send him to the House of Correction, to be punished as a Vagabond, or to a Work-house, in that Act mentioned to be set on work. 14 *Car. 2. c. 12.*

"If any Church-wardens or Overseers, refuse to receive such person so to be removed, and provide for him as an inhabitant; any Justice of Peace may bind them to the Assizes or Sessions, to be indicted for their contempt. This Act to continue to the end of the first Session of the next Parliament. 14 *Car. 2. cap. 12.*

"This



" This Act being but temporary, but of general and publick concern, §. 32.  
 " if any future Parliament shall think fit to continue it, it were good these  
 " following matters were also provided for, and so the *Queres* here made,  
 " thereby removed.

" 1. A Maid servant or Man servant being single, and at service in one  
 " Parish by the year, do contract for a year with a Master in another Parish,  
 " and are there settled; whether upon complaint they may be removed  
 " by this Act. This hath been made a doubt, but yet, it seemeth, such servant  
 " is not within the meaning of the Act: First, For that the Act instanteth  
 " in a persons coming to settle in a Tenement under 10 *l. per annum*; and so  
 " aimeth at persons keeping house, and having a family. Secondly, For  
 " that it is not likely such persons can give the Security intended by the  
 " Act; so likewise of Apprentices.

" 2. A Man dwelling in *A.* and having a family, purchaseth *bona fide*  
 " Lands in *B.* under 10 *l. per annum*, and cometh to live in it with his  
 " family; whether he be removable by this Act: And, it seemeth, he is  
 " not: For that such a one cannot well be adjudged likely to be charge-  
 " able; nor can it be thought the mind of the Parliament to prevent such  
 " settlements.

" 3. As there is a time limited for complaint, and no time limited  
 " for the removal. *Quere*, within what time that must be procured. But  
 " it seems reasonable it should be before the next Sessions after the com-  
 " plaint; otherwise a Parish having complained, may let the person con-  
 " tinue with them, and take his labor, and keep him under apprehensions  
 " of removal, which would discourage Industry.

" Which Cases and Queries are obvious, and many more are; but I  
 " put them not, because I cannot resolve them; and it is well worthy  
 " consideration of wise Law-makers to consider, whether notwithstanding  
 " the specious Allegations in the said Acts preamble, it be not prejudicial  
 " to the Commonwealth. For that, 1. by the words *likely to be chargeable*,  
 " too great a scope is given to any person, although never so just and pru-  
 " dent, to inspect and to determine of another Mans livelihood and con-  
 " dition. 2. A Man without his offence, is debarred of his Natural liberty,  
 " upon a possibility remote enough, be made a Begger and a Prisoner, at  
 " the same time deprived of the company of Friends and Relations, choice  
 " of air and place of Trade. 3. It tends to discouragement of Ingenuity  
 " and Industry; for why should any one learn or endeavor to be excellent  
 " in any Handicraft, which he is likely to make small use, and smaller be-  
 " nefit of? 4. Places and persons are deprived of the labor and industry  
 " of others. 5. It tends to depopulation, which is the greatest inconve-  
 " nience an Island can undergo.

" As to the Authority of these Resolutions, it is not great; for some §. 33.  
 " Countrey Gentlemen coming to Sir Robert Heath, when Chief Justice in  
 " the Circuits, put to him these several Queries, to which he subscribed  
 " his own opinion, and brought the same into *Sergeants-Inn Hall*, and pro-  
 " posed the same to the rest of the Judges; but they differing in opinion  
 " from him in many things, they never came to a resolution, and so were  
 " no more then his private opinion; which some Clerk getting, hath pub-  
 " lished the same, as Master Justice *Twisden* declared in the Court of *Kings*  
 " *Bench*, in *Easter Term*, 28 *Car. 2.* as I heard and observed: And after-  
 " wards in *Michaelsmas Term*, 28 *Car. 2.* a Gentleman of the Bar using these  
 " Resolutions to the third, fourth, and eighth Questions, touching putting  
 " out Apprentices, as an Authority to his purpose, Justice *Twisden* said,  
 " Why do you use that as an Authority, which all the Judges disclaimed?

## Resolutions of the Judges of Assizes. 1633.

1. *Quest.* **W**Hether the Church-wardens and Overseers of the Poor of the Parish, with assent of two Justices of the Peace; one being of the *Quorum*, may by the Statute of 43 *Eliz.* cap. 2. or any Law inforce a Parishioner of the same Parish to take a Child of a Poor Parishioner of the same Parish, who is not able to keep his said Child to be an Apprentice?

Of inforcing persons able to take Apprentices

*Resol.* The Statute of 43 *Eliz.* which saith, That the Church-wardens and Overseers of the Parish shall put out Children to be Apprentices, necessarily implieth, That such as are fit must receive Apprentices, and the putting out of Poor Children to be Apprentices, is one of the best ways for the providing for the Poor. 43 *El.* ca.

Of giving Money with Apprentices

2. *Qu.* If they may, then whether they must not give Money with him, and who shall determine what Money shall be given with him, if the Party that is to take such an Apprentice, and the Church-wardens and Overseers cannot agree thereupon?

*Resol.* There is no necessity that Money must be given, but that must be left to the discretion of the Church-wardens, and Overseers, all circumstances of age and ability being considered; and if they cannot agree with the party, then the Justices of Peace near adjoining, or in their default, the Sessions of Peace are to determine these Controversies.

What persons are bound to entertain Apprentices

3. *Qu.* Whether a Knight, Gentleman, Clergy-man, or Yeoman, or one that is a Sojourner, using Hushandry, Cloathing, or Grasing, or the like; may be inforced to take such an Apprentice?

*Resol.* Every Man who is by Calling, or Profession, or manner of Living, that entertaineth, and must have the use of other Servants of the like quality, must entertain such Apprentices, wherein discretion must be given upon due consideration of Circumstances.

4. *Qu.* Whether a Wealthy Man keeping few or no servants, nor wanting a servant, but living privately, may be forced to take such an Apprentice; if not, then whether he may be taxed towards the putting forth of such an Apprentice?

Apprentices when to be put unto other Parishes.

*Resol.* For the receiving of such Apprentices, the Answer may be referred to the Question next before; but out of doubt every such person must contribute to the charge, as to other charges for the Provision for the Poor.

5. *Qu.* Whether they may inforce a Parishioner that is of one Parish, to take such a Child Apprentice, that is of another Parish, but within the same County or Division, if the proper Parish be not able to provide for the Children of the same Parish?

*Resol.* The Justices may provide Masters for them in other Parishes within the same hundred; if the same hundred be not able, then out of that hundred in the rest of that County; as for other Provision for the Poor, which must be at a Quarter Sessions.

Persons refusing to take such Apprentices

6. *Qu.* If such a Parishioner may be inforced to take such an Apprentice, and shall refuse not only to take such an Apprentice, but also refuse to be bound to appear at the next Quarter Sessions, or Assizes, what shall be done to him?

*Resol.* If any refuse, let such a one be bound over to the next Sessions or

‘or Affizes; if he refuse to give such Bond, let him be sent to the Gaol, there to remain until he shall give such Bond.’

‘7. *Qu.* If such a Parishioner who refuseth to take such an Apprentice, shall be bound over to the Sessions for not taking such an Apprentice, and when he appeareth there, shall likewise refuse, what shall be done to him; and what shall be done to the Parents who refuse to suffer their Children to be put out to be Apprentices, themselves not being able to maintain them?’

‘*Resol.* If at the Sessions or Affizes such a one refuseth to take an Apprentice, and his excuse be not allowed, it is fit he be bound to the Good Behavior; and it will be a good course to indict such a refuser for a contempt, and thereupon to fine and imprison him, if he refuse to be bound to the Good Behavior, let him be imprisoned till he will; and the Kings Book of Orders, directs that such be bound with good Sureties to appear at the Council Board: And if the Parents of such Poor Children refuse to suffer their Children to be bound Apprentices, or being bound, intice them away, themselves not being able to maintain them, let them be committed to the House of Correction.’ *Refusers to take Apprentices at the Quarter Sessions, to be bound to the Good Behavior.*

‘8. *Qu.* Whether it be in the power of any General Quarter Sessions to mitigate any penalty upon a Statute Law; if the Party indicted, shall submit himself to the Fine of the Court, and wave the Traverse?’ *Fines certain not to be mitigated.*

‘*Resol.* If the Party be convicted, or confess the fault, it is not in the Power of the Court to mitigate the Fine, in such cases where the Statute makes it certain: But if the Party indicted protesting his innocency, yet *quia noluit placitare cum domino rege* puts himself up into the Grace of the Court, the Court may impose a moderate Fine, and order to forbear the Prosecution.’

‘9. *Qu.* If any be bound to appear at the Sessions, and shall tender submission to the Court, whether the Sessions may stay the Indictment, and mitigate the Fine aforesaid upon the Confession of the Fact?’

‘*Resol.* This is answered before to the next precedent Article.’

‘10. *Qu.* If a Man be convicted for being drunk, tipling, and keeping an Unlicensed Alehouse, or being Licensed, for suffering others to remain tippling in his house; or for swearing, or driving Cattle upon a Sunday, contrary to the Statute in that case provided; whether the Justice of Peace, before whom he was convicted, or any other Justice of the Peace may discharge him of all, or part of the Forfeiture or Punishment appointed by the Statute?’ *No discharge of any Forfeiture after Conviction for Drunkenness, tipling, &c.*

‘*Resol.* The Justices have no such power or mitigation after conviction, where the Statute appoints the measure of the punishment.’

‘11. *Qu.* Whether a Constable may upon a Warrant for carrying one to the House of Correction for keeping an Unlicensed Alehouse, upon the second Conviction break open the house, wherein the party convicted is, to apprehend him?’ *Constables*

‘*Resol.* This Question is to be advised upon, it is put in general terms, and referred to be considered in the particular where it appeareth.’

‘12. *Qu.* If a Woman unmarried be hired from week to week, or from half year to half, in one Parish; and there be gotten with child, and then goeth from thence unto another Parish, where she is settled in service by the space of two or three moneths, and then discovered that she is with child. The Question is, Whether she shall be settled in the Parish’ *Settlement of a Woman gotten with child.*



'Parish where she was begotten with child, or in the Parish where she was last settled?

'*Resol.* The place where such a Woman was lawfully settled, is the Direction in this case, not where she was begotten with Child.

A Woman  
gotten with  
child, the  
Master to  
provide for  
her till her  
delivery.

'13. *Qn.* If a Woman servant unmarried, be begotten with Child, and then goeth out of her Masters service, before or after it is discovered that she is with Child, and the Reputed-father be run away, or is not able to free the Parish: Whether the Master may be enforced to provide for her till she be delivered, and for a month after?

'*Resol.* If the Master hath legally discharged his house of such a servant, he is no more bound to provide for her then for any other.

Tenant in  
ancient De-  
mesne.

'14. *Qn.* In case a Parish consist part of ancient Demesne, and part of Guildable, an Assize is made for the relief of the Maimed Soldiers, the Gaol, &c. according to the Statute of 24 *El. cap. 2.* where the Tenants in ancient Demesne shall contribute with the Guildable for the payment of the Assize?

'*Resol.* The Statute doth not distinguish between the ancient Demesne and the Guildable in these cases, *Ubi lex non distinguitur, ibi nec nos distinguimus.*

Indictment  
of Forcible  
Entry re-  
moved by  
Certiorari.

'15. *Qn.* Whether an Indictment of Forcible Detainer be within the Statute of 1 *Jac. cap. 5.* and not to be removed by *Certiorari*, unless the Party indicted first find Sureties according to the Statute; and whether the Party indicted be to be bound in his absence to prosecute according to that Statute; and whether an Indictment of Forcible Entry, &c. found at a private Sessions, be to be removed by *Certiorari* without Sureties, according to that Statute?

'*Resol.* This is fittest to be left unto the Court of Kings Bench, to whose Commission and Jurisdiction this is most proper.

Driving  
Cattle on  
the Sab-  
bath.

'16. *Qn.* If one be convicted upon the Statute of 3 *Car. cap. 13.* for driving of Cattle on the Sunday throughout several Parishes; whether he shall forfeit 20 s. to every of the said Parishes, or only to one; if to one, then to which of them?

'*Resol.* This Statute giveth the Forfeiture but of one 20 s. for one Sabbath day, although the driving of that day be through divers Parishes. Therefore where the Action is first attached, and the distress first taken, that Parish shall have the benefit of the Forfeiture, and not the other.

Persons able  
not putting  
themselves  
to service  
after warn-  
ing.

'17. *Qn.* If one who is under the age of thirty years, and brought up in Husbandry, or a Maid servant, or brought up in any of the Arts and Trades mentioned in the Statute of 5 *Eliz. cap. 4.* and not inabled according to that Statute, to live at his or her own hand, shall be warned by two Justices of the Peace to put him or her self in service, by a day prescribed by them, and shall not do the same accordingly, but shall after continue living at his or her own hand; what course shall be taken with such a person, and how punished?

'*Resol.* Such persons being out of service, and not having visible means of their own, to maintain themselves without their labor, and refusing to serve as an hired servant by the year, may be bound over to the next Sessions or Assizes, and to be of the Good Behavior in the mean time, or may be sent to the House of Correction.

Tax for  
the Poor,  
now to be  
made ac-  
cording to  
the Statute.

'18. *Qn.* Whether the Tax for the Relief of the Poor upon the Statute of 43 *El.* shall be made by ability, or occupation of Lands, or both; and whether the visible ability in the Parish where he lives, or general ability where-

‘wheresoever; and whether his Rent received within the Parish where he lives shall be accounted visible ability, and whether he shall be taxed for them only, and for any Rent received from other Parishioners; and what shall be said visible ability?’

‘*Resol.* The Land within each Parish is to be taxed to the Charges in the first place equally and indifferently, but there may be an addition for the personal visible ability of the Parishioners within that Parish, according to good discretion, wherein if there be any mistaking, the Sessions, &c. or the Justice must judge between them.

‘19. *Qu.* Whether Shops, Salt-pits, Sheds, Profits of a Market, &c. be taxable to the Poor as well as Lands, Cole-mines, &c. expressed in the Statute 43 *Eliz.* *Things taxable to the Poor.*

‘*Resol.* All things which are real, and a yearly revenue, must be taxed to the Poor.

14 *El.* 2. ‘20. *Qu.* Whether the Tax for the County Stock, Gaol, and House of Correction, is to be made by the Statute of 14 *Eliz.* 5. 43 *Eliz.* 2. by ability, and upon the Inhabitants of the Parish only, or upon them, or the occupiers of Lands, dwelling in that Parish, or whether such as occupy Lands in that Parish, and dwell in another Parish, shall be taxed? *Tax for the County-Stock, Gaol, House of Correction, how to be made.*

‘*Resol.* If the Statute in particular Cases give no special direction, it is good discretion to go according to the rate of Taxation for the Poor: But when the Statutes themselves give direction, follow that.

‘21. *Qu.* Whether any Taxes ought to be made for the Charges that Petty-Constables and Borlholders are at, in conveying Rogues from Parish to Parish, and relieving of them, and how to be rated? *Tax for the Charges of Petty-Constables.*

‘*Resol.* It is fit to relieve the Constable and Tithingmen, in such sort as hath been used in the several places where they live.

‘22. *Qu.* Whether a Justice of Peace may discharge a Servant, being with Child, from her Service, allowing that as a reasonable cause that she is thereby made unable to do the service, which otherwise she might have done; and if he may discharge her, whether that Parish shall provide for her, till her delivery, if she cannot provide for her self; and so also, if her time be expired before her delivery, who shall provide for her after her time ended?’

‘*Resol.* If a Woman being with Child, procure her self to be retained with a Master who knoweth nothing thereof, this is a good cause to discharge her from her service. And if she be gotten with Child, during her service, it is all one: But the Master in neither case must turn away such a servant of his own authority. But if her term be ended, or she lawfully discharged; the Master is not bound to provide for her, but it is a misfortune fallen upon the Parish, which they must bear, as in other cases of casual impotency. *A Woman servants with child; how to be discharged.*

‘23. *Qu.* Whether one being delivered of a Bastard-child in one Parish, and goeth into another with her child, and becomes Vagrant, and so is sent to the place of her Birth: Her Bastard-child being under the age of seven years, shall be settled with the Mother, and there maintained; if the Mother be not able, nor the Reputed-father known, found; or whether it shall be sent to the place of its Birth, or being settled with the Mother, whether the Parish where it was born, shall be ordered by the two next Justices to pay a weekly sum towards the maintenance of it?’

‘*Resol.* The Bastard-child must be placed with the Mother, so long as it is within the quality or condition of a Nurse-child, which shall be, till seven years of age; and then it is fit to be sent to the place of its Birth to be provided for, the Mother or Reputed-father not being able. *Bastard-children, how to be disposed.*

‘And

‘ And the Parish where the Child is born shall not be forced to contribute  
 ‘ to the charge, as long as the Mother lives, and the Child be under seven  
 ‘ years old.

‘ 24. *Qu.* A Man with his Wife and Children, takes an house in one  
 ‘ Parish for a year, and before the end of his term is unlawfully put out of  
 ‘ possession, and after takes part of an house as an Inmate in another Parish,  
 ‘ from whence he is also put out, and then not being able to get any dwell-  
 ‘ ing, they come to lie in a Barn in a third Parish, where the Husband fall-  
 ‘ eth sick, and the Wife is delivered of another Child, where ought these  
 ‘ to be settled?

Illegal un-  
 settlement  
 not to be  
 allowed.

‘ *Resol.* If a Man or Woman having house or habitation in one Parish,  
 ‘ be thrust out; this is an illegal unsettling, which the Law forbiddeth, for  
 ‘ none must be enforced to turn Vagrant, and such one must be returned to  
 ‘ the place where he or she was last lawfully settled, and the Child also  
 ‘ born in the time of his distraction.

Apprentices  
 put out into  
 another Pa-  
 rish where  
 the Master  
 dies.

‘ 25. *Qu.* Whether an Apprentice put out by the Church-wardens,  
 ‘ &c. according to the Statute to a Master in another Parish, if his Master  
 ‘ die, and leave no Executor or Administrator fit to keep an Apprentice,  
 ‘ or able to place him: He shall be provided for in the Parish where he was  
 ‘ Apprentice, or shall be sent back to the Parish from whence he was put  
 ‘ out?

‘ *Resol.* Servants and Apprentices are by Law settled in that Parish,  
 ‘ and if they become impotent there, the Parish must abide the adventure,  
 ‘ after their term or time of service be lawfully ended.

What is ac-  
 counted a  
 lawful set-  
 tlement.

‘ 26. *Qu.* What is accounted a lawful settling in a Parish, and what  
 ‘ not?

‘ *Resol.* This is too general a question, to receive a perfect answer to  
 ‘ every particular case which may happen: But generally this is to be ob-  
 ‘ served, that the Law unsettleth none who are lawfully settled, nor permits  
 ‘ it to be done by practice or compulsion; and every one who is settled as a  
 ‘ Native Householder, Sojourner, an Apprentice or Servant for a moneth at  
 ‘ the least, without a just complaint made to remove him or her, shall be  
 ‘ held to be settled.

A Rogue  
 misconfes-  
 sing the  
 place of his  
 Birth or  
 Habitation.

‘ 27. *Qu.* A Rogue is taken at C. and will not confess the place of  
 ‘ his Birth; neither doth it appear otherwise, but that he confesseth the  
 ‘ last place of his habitation to be at S. Hereupon he is whipped, and sent  
 ‘ to S; at his coming to S. the place of his birth is there known to be at W;  
 ‘ and thereupon the Rogue confesseth it to be so, whether he might with-  
 ‘ out any new vagrancy be sent to W?

‘ *Resol.* In this case it is fit to send such a Rogue to the place of his  
 ‘ birth; for this is but a mistaking, and no legal settling.

In what the  
 Gaol may  
 be deliver-  
 ed at the  
 Sessions.

‘ 28. *Qu.* If an Indictment be preferred to the Grand Jury of the  
 ‘ Quarter Sessions of the Peace against one for Murther, Man-slaughter;  
 ‘ for Robbery, Felony, or Petty-larceny, and *Ignoramus* found thereupon,  
 ‘ whether the said Sessions may deliver the Party by Proclamation, or  
 ‘ not?

‘ *Resol.* Not by Proclamation at all, but for Petty-larcenies, and  
 ‘ other Petty Felonies, in discretion the Gaol may be delivered of them.

Constable  
 elect refu-  
 sing.

‘ 29. *Qu.* If a Constable be chosen, and refuseth to take his Oath,  
 ‘ what shall be done, and whether a Constable may make a Deputy; and  
 ‘ by what means?

Deputy  
 Constables.

‘ *Resol.* The refusal or neglect to take an Oath in such a case, is a con-  
 ‘ tempt worthy of punishment, and thereupon to Fine and Imprison him;  
 ‘ and the making of a Deputy is rather by Toleration, then by Law.

‘ 30. *Qu.*



30. *Qu.* If a Constable die, or remove out of the Parish where, &c. Constable dying, how to be supplied.  
 'How is his place to be supplied?

*Resol.* By the Lord of the Leet, if that time fall near, otherwise by the Sessions; but if that be too far off, then by the next Justices.

31. *Qu.* If a Poor weak Man be chosen Constable or Tithingman, Constable unfit, how to be removed.  
 'and be unfit for the place; how may he be removed, and a fit Man sworn in his room?

*Resol.* The Justices of Peace must help this, and if the Lord of the Leet have power to chuse a Constable or Tithingman, and perform it so ill, it is a just cause to seise his liberty.

32. *Qu.* If a Nurse-child, a Scholar at a Grammar-School, or in the Nurse-child, Scholar, Bastard in a Gaol, Houses of Correction.  
 'University prove to be impotent by Sickness, Lameness, Lunacy, or discovery of Ideocy, &c. How such persons shall be disposed?

*Resol.* A Nurse-child, or a Scholar at the Grammar-School, or at the University, or Persons sent to the Common Gaol, Hospital, or House of Correction, are not to be esteemed as persons to be settled there, more than Travellers in their Inns, but their settling is where their Parents are settled; and Children born in Common Gaols, and Houses of Correction, their Parents being Prisoners, are to be maintained at the charge of the County.

33. *Qu.* What proportion shall Parsonages, or Tithes bear to the Parson, Vicar, how chargeable to the Poor upon the St. 43 El. In what Cases Poor may be placed as Inmates.  
 'Taxation of the Poor of the Parish?

*Resol.* The Parson or Vicar Presentative, shall bear according to the reasonable value of his Parsonage, having consideration to the just deductions.

34. *Qu.* Whether for placing the Poor of the Parish, not to be removed by consent of the Parish, these Poor Men may not be placed as Strangers apparently like to be chargeable to the Parish brought in, the bringers in of them to be taxed.  
 'Inmates for a time?

*Resol.* They may by exprefs words of the Statute of the 43 Eliz.

35. *Qu.* If a Parishioner, or Owner within a Parish, do bring into the Parish, (without the consent of the Parish) a stranger of another Parish, which is, or apparently, is like to be burthenfome unto the Parish; how may they ease themselves?

*Resol.* By Taxing such a one to the charge of the Rates of the Poor, not only having respect to his ability, or the Land he occupies, but according to the damage and danger he bringeth to the Parish by his folly.

36. *Qu.* For warding in the day time, for apprehending of Rogues, warding in the day time for apprehending of Rogues.  
 'whether the Constable may not enlarge it to a further time?

*Resol.* Warding in the day time is of great use, and must be left to the discretion of the Constables, or direction of the Justices to vary according to the occasion.

37. *Qu.* Whether Alehouses ought to be allowed only in thoroughfare Towns, and others in other places to be restrained only to sell to Alehouses to be moderated in number.  
 'Poor out of doors?

*Resol.* The Justices shall do very well to allow none but in places very fit for their situation and uses, and to moderate the number.

38. *Qu.* A Man for his quality otherwise fit to be a Constable, or of other Office of that nature, procures himself to be the Kings Servant Constable the Kings Servant.  
 'extraordinary, and by that means would excuse himself to serve in the Countrey?

*Resol.* A Servant extraordinary may well perform his ordinary Service in the Countrey, according to his quality.

*The Justices Opinion touching the Commission by which the Justices sit at Newgate.*

**T**He Justices at Newgate sit by vertue of two Commissions, viz. Gaol-delivery, and Oyer and Terminer.

By the Commission of Gaol-delivery, they may try all Prisoners in the Gaol, or by Bail, or such as be indicted, and will render themselves generally for all Felonies; and also for such other offences as are particularly assigned to them by Statute.

The Statute of 4 Eliz. 3. cap. 2. doth give them power to receive Indictments against Prisoners, or such as are upon Bail, and to proceed to try the same, viz. Indictments taken before the Justices of the Peace, and by Equity thereof, all Indictments before Coroners, 3 Mar. Bro. Commission. omnium 24. saith, the Commission is, *Ad Deliberand. Gaol. de prison. in eisdem existen.* But they cannot take Indictments as Justices of Gaol-delivery, but being Justices of the Peace, they may take Indictments against Prisoners, but not against them that be at large; forasmuch as no power is given them consequently, they must have means to do so, which is by Indictments. *Id. querend.*

Howsoever it is clear, That they may inquire of many offences, and take Indictments in such Cases where power by the Statute is given to the Justices of Gaol-delivery; in such Cases where they have authority by Law or Statute, there the title of Indictment is, that *ad gaolam deliberand. tent.* before the Commissioners of Gaol-delivery J. S. was indicted, and the Record must be made up so.

And whereas by the Statute of 4 Eliz. 3. cap. 2. Indictments taken before Justices of Peace or Coroners, or any other against any Prisoner, then the Entry of the Indictments is returned taken, *Memorand. quod ad generalem Sessionem tent.* before A. B. C. Justices *ad pacem in Com. Middlesex* or *London*, J. S. was indicted, and then tried before Justices of Gaol-delivery, and by vertue of the said Statute, Indictments taken before Justices of the Peace of *London* or *Middlesex*, are tried before the Justices of Gaol-delivery.

The Commissioners of Oyer and Terminer is *Ad triand. inquirend. audiend. & determinand.* They may inquire of all offences mentioned in the Commission, albeit the offenders be at large, but they cannot try Prisoners upon Indictments taken before any other then themselves, as the Justices of Gaol-delivery may by the aforesaid Statute, unless there be a special Commission made, as it was in the Case of the Earl of Leicester, mentioned in *Plow. Com.* for the ordinary Commission of Oyer and Terminer is *ad inquirend. audiend. & determinand.* Therefore they cannot determine of things unless they made inquiry first; and on the other side also the Justices of Gaol-delivery may try Indictments taken before Justices of the Peace; yet if one be indicted before Commissioners of Oyer and Terminer, the Justices of Gaol-delivery cannot try the same, because the Record of the Commission of Oyer and Terminer are to be returned in the Kings Bench. 44 E. 3. 31.

The Commission and the Records of the proceedings before the Justices of Gaol-delivery, are to be returned to the *Custos Rotulor.* of the County, when the same persons are Justices of Gaol-delivery, and of Oyer and Terminer, they may sit the same day and place, and inquire by the same Jury, but the Entry of the Records must be several, according as the Indictment is.

At

At the Assizes in the Countrey, the Justices have their several power as the Justices of Gaol-delivery, *Oyer and Terminer*, and Justices of Peace.

But when the Records are made up, they must be according to the power they made election to proceed upon.

This is the regular and legal course. But the Clerks of the Assizes promiscuously make Entry thereof; but if a Writ of Error be brought, they must certifie according to Law, or else it will be erroneous; and so upon a *Certiorari*.

The Sessions of *London* may be begun at the *Guildhal*, and then adjourned to *Newgate*; if some Indictments be at *Guildhal*, then those must be so certified: If others at *Newgate*, then the adjournment must be mentioned, and that the Indictment was then taken.

Note, That the tryal of Indictments taken before Justices of the Peace of *London*, cannot be tried at *Newgate*, as in nature of a tryal before Justices of the Peace at *London*, for many of the Commissioners for Gaol-delivery are not Justices of the Peace for *London*, but in such Cases the tryal must be before the Justices of Gaol-delivery: As upon Indictments taken before the Justices of the Peace of *London*; as in the Case of Indictments taken before the Justices of the Peace of *Middlesex*.

But if Indictments at *Newgate* be originally taken before them, as Justices of Gaol-delivery, then it is inquirable how the Jury sworn, and impanelled to inquire at the Sessions of the Peace for *London* or *Middlesex*, do serve to present Indictments before the Justices of Gaol-delivery at *Newgate*, unless the custom and usage will warrant the two several Juries sworn at the Sessions of the Peace for *London* or *Middlesex*, are also by the same Oath and impanelling, to serve for the Grand Jury for the Commission of Gaol-delivery, and *Oyer and Terminer*.

Upon Conference with the Clerks for *Newgate* of *London*, and *Middlesex*, and the Clerks of Assizes, and view of the several Entries, more certain resolution may be given, as occasion may be offered, in any particular Case.

Next, here is consideration to be had of three sorts or degrees of Poor,

#### 1. Poor by Impotency and Defect.

1. The Aged and Decrepit, that are past labor.
2. The Infant, Fatherless, and Motherless, and not able to work.
3. The Person naturally disabled, either in wit, or member, as an Idiot, Lunatick, Blind, Lame, &c. not being able to work.
4. The Person visited with grievous disease, or sickness, though casually, yet thereby for the time being impotent.

All these (being impotent and not able to work) are to be found, and provided for by the Overseers of necessary relief; and are to have allowances proportionable, and according to the continuance and measure of their maladies, and needs; and of these it may be said, *Sic non parvisti, occidisti*.

#### 2. Poor by Casualty.

1. The Person casually disabled, or maimed in his Body, as the Soldier, or Laborer, &c. maimed in their lawful Callings.
2. The Householder decayed by casualty of Fire, Water, Robbery, Suretiship, &c.
3. The Poor Man overcharged with Children.



All these last (and such others) having ability and strength of Body, but not sufficient means to maintain themselves, are to be holpen, or set to work by the Overseers; and being not able to live by their work, are in charity further to be relieved in some reasonable proportion, according to their several wants and necessities.

### 3. Thriftless Poor.

1. The Riotous and Prodigal Person, that consumeth all with Play, or Drinking, &c.
2. The Dissolute Person, as the Strumpet, Pilferer, &c.
3. The Slothful Person, that refuseth to work.
4. All such as wilfully spoil or imbezle their work, &c.
5. The Vagabond that will abide in no service or place.

For all these last, the House of Correction is fittest; and there such persons being able in body are to be compelled to labor, that by labor and punishment of their bodies, their froward natures may be bridled, their evil minds bettered, and others by their example terrified. Also the rule of the Apostle is, *That such as would not work, should not eat.* 2 Theſ. 3. 10.

And all such Persons sent to the House of Correction, must there live by their own labor and work, without charging the Town or Countrey for any allowance. See to that purpose the Statute of 7 Jac. cap. 4.

But for the Overseers to suffer such persons (or any other persons, which can live of their labors or otherwise) to be chargeable to the Town, or to relieve such, were a means, to nourish them in their lewdness or idleness which take it, and to rob others of relief that want it, to wrong those of their Money that pay it, and to condemn them of oversight which dispose it.

And yet if any of these last happen to prove impotent, then according to the Statute 11 H. 7. cap. 2. it seemeth, they are to be relieved with Bread and Water without other sustenance: And so a Reverend Judge delivered it in his charge at Cambridge Assizes. But yet Charity will us in cases of manifest extremity, it seemeth, that they are to be relieved by the Town. But I leave that to better consideration.

§. 36. *Apprentices* Where any sums of Money (at any time within three years before the making of the Statute 7 Jac. cap. 3.) have been given, or hereafter shall be continually employed for the binding out of Apprentices unto Trades and Occupations, the Parson, or Vicar, Constables, Church-wardens, and Overseers for the Poor, in Towns not Incorporate, or the most part of them, are by the Statute appointed to have the disposing of such stocks and sums of Money: Which persons shall once every year, within one moneth after Easter day, make a true and perfect account before two or more Justices of the Peace (dwelling in or next to every the said Towns or Parishes) of all such sums as they have so employed; and of all Bonds taken for the payment thereof, and of all sums remaining in their hands, and not employed.

§. 37. *Licensed to travel.* Two Justices of Peace may license Poor diseased Persons to travel to the Baths for remedy of their griefs, so as they be provided of necessary relief (*scil.* With Money in their Purses, &c.) for their travel, and beg not: See hereof *postea. tit. Rogues. cap. 47.*

*Testimonial* The Justice of Peace dwelling near where any Person suffering shipwreck shall land, or where any Poor Soldier, or Mariner shall land, may, and ought to make a Testimonial under his hand, to such persons, of their landing, &c. and thereby to license them to pass the next direct way to their

9 Eliz. 4.  
1 Jac. 17.

39 Eliz. 4.  
39 El. 17.

their place of birth or dwelling, &c. limiting them therein a convenient time for their passage. See the title *Rogues*.

But it seemeth no Justice or Justices of Peace may or can in any case License any Poor Man to wander or beg at all; nor may License any Poor "to travel, but only in these former three last cases. See the title *Rogues*.

Here I thought it not amiss shortly again to observe such offences, as the Justices of Peace out of their Sessions are to deal withal, and where the Forfeitures (or part thereof) are given by the Statute to the use of the Poor of the Parish where the offences be committed.

1 Jac. 9. Alehouse keepers, and Inn-keepers, &c. suffering Townsmen, or any other person to continue drinking in their houses, the Forfeitures shall be to the use of the Poor of that Parish, &c. See before *tit. Alehouses*, & 21 Jac. cap. 7. So of Alehouse-keepers without License. *Ibidem*. §. 38. Forfeitures and Penalties to the use of the Poor. Alehouses

4 Jac. So of Alehouse-keepers, &c. selling less then one quart of their best Beer or Ale for 1 *d.* and two quarts of their small for 1 *d.* See *ibid*.

So of Townsmen, or others, tipling in Alehouses, &c. See *ibid*.

1 Jac. So of Constables, &c. not levying the Forfeitures of the offenders aforesaid. or not whipping the offenders, upon the Justices Warrant. See *ibid*.

So of Persons convinced of Drunkenness, *ibid*.

21 Jac. 18 So the Mony made upon sale of Teinters, or other like Engines (found by the Justices of Peace, or by the Overseers of Cloth.) See *tit. Cloth antea*. Cloth.

All Penalties and Forfeitures for want of length, bredth, and weight of Cloth, limited by any former Act now in force, or by this present Act, shall be distributed into three equal parts, whereof two parts shall be unto the Poor of the Parish where the said Cloth shall be made, to be levied by Warrant made by two Justices of Peace (directed to the Church-wardens and Overseers of the Poor of such Parish) by way of Distress and Sale of the offenders Goods, &c. 21 Jac. cap. 18.

The moiety of the forfeiture for destroying the Spawn of Sea-fish. See *tit. Fish, antea*. Fish.

The Flesh in Lent time, found in any Victualling-house (upon the Justices search.) *Vide tit. Fish-days*.

Taking or destroying of any Feasant, Partridge, or other Fowl. *Vide tit. Partridges, c. 68. §. 2.* Feasants. Partridges.

Taking or destroying the Eggs of any Feasant, Partridge, or Swan. See *ibid*.

Meeting of People out of their own Parishes on the Sunday, for any sport or pastimes whatsoever. *Vide tit. Games*.

Using any unlawful Games or Pastimes within their own Parish, by any Person upon the Sunday. *Vide ibidem*.

Taking, destroying, tracing or coursing in the Snow, of any Hare. See *ib*.

Keeping of any Greyhound, Setting-Dog, or Net, to take Partridges or Feasants, contrary to the Statute. See *ibid*.

Selling of any Deer, Hare, Partridge, or Feasant. See *ibidem*, & *vide Stat. 1 Jac. cap. 27*.

Hawking between the first day of July, and the last of August. *Vide tit. Partridges*.

Overseers of the Poor, negligent in the execution of their Office. See *tit. Poor* before in this title, *Poor*.

Parents or Children, failing to relieve each other, as shall be ordered at the Sessions. See *ibid*.

Such as shall put out any of their Parish, that be not to be put out. See *ibid*.

Such as shall any ways disturb the relief or settling of the Poor. See *ibidem*.

*Recusants.* Persons absenting themselves from Church upon any Sunday. *Vide tit. Recusants, 3 Jac. cap. 4. 35 El. 2.*

*Rogues.* Persons disturbing the execution of the Law made 39 *Eliz.* concerning the punishing, or conveying of Rogues. *Vide tit. Rogues.*

Sending Rogues by a general Passport. See *Ibid. Resol. 13.*

Constables not receiving a Rogue, to convey him according to the Statute. See *ibidem*.

If a Rogue shall not be delivered to the next Constable, to be conveyed still forward, &c. See *ibidem*.

"For not reading Common Prayer once a moneth. 14 *Car. 2. cap. 14.*

"p. 1.

"A third part of the Forfeitures upon the Excise Acts. See *tit. Excise.*

"chap. 28.

"A third part of the Forfeiture upon Conventicles, by the Act of " *Car. 2.*

"A third part of the Forfeiture on Highways. 22 *Car. 2.*

If a Rogue be sent to the Town whereto he ought, and be there refused. See *ibid. Resol. 12.*

The Minister not keeping a Register Book, and therein entring every Testimonial made for the conveying of Rogues punished in his Parish. See *ibidem*.

Constables not doing their best endeavor for the apprehending, punishing, and conveying of all Rogues. See *ibid.*

"The Constable which shall not punish a Rogue, &c. brought to him, shall forfeit 20 s.

Every Person that shall not apprehend Rogues resorting to his house. See *ibidem*.

Every person bringing into this Realm any Rogue. See *ibid.*

Profane Swearing and Cursing. See the Act for punishing Swearing according to the degree of the Person offending.

Carriers and Drovers travelling upon the Sunday. See the Act for better observing the Lords day.

And Butchers killing, or selling upon that day.

§. 39. "One or more Corporation or Corporations, Workhouse or Work-  
*London.* "houses in London, Middlesex, and Surrey, within the limits of the weekly  
"Bills of Mortality, consisting of a President, Deputy President, and Treas-  
"urer. *14 Car. 2. c. 12.*

"In London, the Lord Major to be President, and the Assistants to be  
"the Aldermen, and Fifty two Citizens to be chosen by the Common Coun-  
"cil; and the President and Assistants to chuse a Deputy and Treasurer, and  
"other necessary Officers; and upon a vacancy of any Assistant, the power  
"to be in the Common Council. *Ibid.*

*Westminster* "That the Lord Chancellor or Lord Keeper to chuse the President and  
"Deputy, the Treasurer and Assistants, out of the most fitting Person in  
"Westminster, for the Corporation there; and the vacancy to be supplied  
"by the Justices of the Peace in Sessions. *Ibid.*

*Middlesex and Surrey.* "That in Middlesex and Surrey, the President, Treasurer, and Assist-  
"ants, shall respectively be nominated by the Justices of Peace in their Ses-  
"sions, and the vacancy supplied by them. *Ibid.*

*Corporations.* "Which President, Deputy President, Treasurer, and Assistants, shall  
"be a Body Corporate, and may purchase not exceeding 300 l. a year,  
"and may sue and be sued, and may take gifts of Money; and each re-  
"spective



- “pective Corporations, or seven of them may keep Courts at the request  
 “of any four of the Corporation, and may have a Common Seal.
- 14 Car. 2.  
 c. 12. “The Justices at every Quarter Sessions, may require an Accompts of *Accompt.*  
 “Receipts and Disbursements, from the Officers and Treasurers, how many  
 “Poor people have been set on work the last year; what Stock there was,  
 “and is remaining.
- Ibid. “The President and Governors, or any appointed by them, or any *Rogues*  
 “two of them, may apprehend Rogues, Vagrants, Sturdy-Beggars, or idle  
 “and disorderly persons within their Precincts, and keep them to work.
- Ibid. “The President and Governors may under their Common Seal, certi- *Stock*  
 “fie the defect of a Stock for the Foundation, or future supply; and what  
 “Money they think fit to the Common Council for *London*, Burgesses and  
 “Justices in Sessions for *Westminster*; and to the Justices of Peace at their  
 “Sessions for *Surrey* and *Middlesex*, who are required to ascertain such sum  
 “of Money, not exceeding one years rate, and the same to proportion  
 “upon the several Wards, &c. And thereupon the Aldermen, Deputies,  
 “and Common Council-men in *London*, the Burgesses and Justices of Peace  
 “in *Westminster*, and Justices of Peace in *Middlesex* and *Surrey*, to rate the  
 “Inhabitants; and if any be grieved, he may appeal to the next Sessions.
- Ibid. “The Aldermen and Deputies in *London*, the Burgesses and Justices  
 “of Peace in *Westminster*, and Justices of Peace in *Middlesex* and *Surrey*,  
 “or any two of them respectively, may by Warrant under their Hands and  
 “Seals, authorise the Church-wardens and Overseers, to demand and re-  
 “ceive the Money aforesaid, and upon notice in Writing left at the House or  
 “Lodging, and non-payment within ten days, to levy by Distress and  
 “Sale, rendring the overplus:
- Ibid. “All Stocks, in *London*, in the hands of any person with arrears of  
 “of Money and Legacies for the Poor shall be paid to the Treasurers there.
- Ibid. “The President and Governors, or any seven of them, may make Or-  
 “ders and By-laws, for regulating the work, apprehending Rogues, and  
 “other purposes.
- Ibid. “The President and Governors, or fourteen of them, may chuse and  
 “remove Officers, and make allowances to them, as they shall think fit.
- “All Sheriffs, Constables, and other Officers and Ministers of Justice,  
 “shall be aiding to the said Corporation, and to all Officers to be employed  
 “by them. 14 Car. 2. c. 12.
- “But as to laying of Rates, the power expired at *Michaelmas*, 1675.  
 “by vertue of an Act made 22 & 23 Car. 2.
- “By which last Act, the Officers of the said Corporations are to  
 “give a quarterly Accompt to the Justices of Peace, who are to call for  
 “it of them. 22 & 23 Car. 2.
- “And note, The Justices have no power to mitigate any Fine imposed  
 “for these offences.

## Post Office. CHAP. LXXIV.

- 12 Car. 2.  
 c. 35. “One unless constituted by Letters Patents, shall exercise any *Off.*  
 “thing belonging to the Post-office thereby erected, upon pain to  
 “forfeit 5 *l.* for every several offence, and 100 *l.* a week, so long as he  
 “shall continue so to do, to be recovered in any the Kings Courts of Re-  
 “cord, by Action, &c. or Information. One moiety to the King, the other  
 “to the Informer.”

- §. 2. "If in the defect of the Post-master, any person riding Post shall fail of <sup>12 Car. 2. c. 35.</sup>  
*Failur.* "a sufficient Horse, the Post-master General shall forfeit 5 *l.* A moiety to  
 "the King, the other moiety to the prosecutor in any Court of Record, by  
 "Action, &c. or Information.
- §. 3. "If the Packet or Mail carried out of *England*, shall not be carried <sup>Ibid.</sup>  
*Ship.* "in a Ship, Vessel, or Boat, *English* built, and Navigated by *English*. The  
 "Post-master General shall forfeit 100 *l.* One moiety to the King, the  
 "other moiety to the prosecutor, in any Court of Record, by Bill, Plaint,  
 "or Information.
- §. 4. "No Person shall be capable of the Office of Post-master General, <sup>Ibid.</sup>  
*Oath.* "or any Employment relating to that Office; unless he shall take the Oaths  
 "of Allegiance and Supremacy before two Justices of the County, where  
 "he is or shall be resident. <sup>12 Car. 2. c. 5.</sup>

## Preachers. CHAP. LXXV. V. 41.

§. 1. *Disturb-  
ing  
i* IF any Person shall of his own authority, willingly, and of purpose, by <sup>1 Mar. 1. c. 3. p. 1, 2.</sup>  
 open act, maliciously disturb any Preacher in the time of his Sermon,  
 or other Divine Service, or shall be aiding, procuring, or abetting thereto;  
 or shall rescue any such offender being apprehended, or shall disturb the  
 arresting of any such offender; and that any of the said offenders shall be <sup>1 Mar. p. 1. c. 3.</sup>  
 brought before any Justice of Peace, (within the County where the said  
 offence shall be committed) then every such Justice of Peace (upon due  
 accusation thereupon made) shall forthwith commit every such offender  
 (so brought before him) to safe custody by his discretion.

§. 2. *Two Justices.  
Examination.* Within six days (after accusation had of any the said offences) and <sup>Ibid.</sup>  
 after the committing of the said offender to safe custody by one Justice of  
 the Peace, one other Justice of the Peace of that Shire, must joyn with the  
 first Justice in the examination of the said offence; and if they two upon  
 their examination shall find the party accused guilty (and that by two suf-  
 ficient witnesses, or by his own confession) then shall they commit him to  
 the Gaol, there to remain without Bail, for three moneths then next in-  
 suing; and further, to the next Quarter Sessions, &c. But inquire, if all  
 this Statute be not Repealed by <sup>1 Eliz. cap. 2.</sup> in general words at the latter  
 end thereof, *Lamb. 199.* yet it seemeth not to be repealed in this matter,  
*scil.* for disturbance of Preachers: For this Statute containeth divers se-  
 veral Matters, and so divers Statutes. *Crompt. 14.*

And yet Sir Nicholas Hide at Bury, Lent Assizes, *An. 1629.* delivered <sup>1 Mar. c. 3.</sup>  
 it (as I am credibly informed) that this Statute was wholly repealed by the  
 Statute made <sup>1 El. cap. 2.</sup>

## Printers and Printing. CHAP. LXXVI.

§. 1. *Scandalous  
Books.* "NO Person shall Print, or cause to be Printed, in *England* or Beyond  
 "Seas, any Book or Pamphlets, wherein any Doctrine or Opinion  
 "shall be asserted that is contrary to the Christian Faith, or the Doctrine  
 "or Discipline of the Church of *England*; or which may tend to the Scan-  
 "dal of Religion, or the Church, or the Government, or Governors of  
 "Church, State, or Commonwealth, or of any Corporation or Person.  
 "Nor shall import, publish, sell, or dispose of such Books, nor procure such  
 "to

"to be published, or put to sale, or to be Bound, Stitched, or Sewed.

"14 Car. 2. c. 33.

14 Car. 2.  
c. 33.

"No private Person shall Print, or cause to be Printed, any Book or Pamphlet, unless the same with all things annexed thereunto, be first Entred in the Register of the Stationers Company of London: Except Acts of Parliament and Proclamations as shall be appointed to be Printed, by Warrant under the Kings Sign-Manual, or under the Hand of one or more of the Principal Secretaries of State; and unless the same be Licensed as followeth.

Ibid.

"1. All Books of the Common Law, by the Lord Chancellor, Lord Keeper, Two Lord Chief Justices, or Lord Chief Baron, or one of them; or by their, or one of their appointment.

Ibid.

"2. All Books of History of this State, or Affairs of State, by the Principal Secretaries of State, or one of them; or by their, or one of their appointment.

Ibid.

"3. Books concerning Heraldry, Titles of Honor and Arms, or Office of Earls Marshal, by the Earl Marshal, or his appointment; or if none, by Garter, Clarenceux and Norroy, or any two of them, *quorum Garter unus.*

Ibid.

"4. All other Books to be Printed or Reprinted of any Art or Science, by the Archbishop of Canterbury, and Bishop of London, or one of them, &c. Or by one of the Chancellors or Vice-chancellors of either the Universities, within the Universities only, they not meddling with Common Law Books, or Books of Government; nor Books whereof the right of Printing belongs to others.

Ibid.

"Every Licenser shall have a Copy in Writing of such Book, and shall deliver the same Book to the Printer or owner, who when Printed, shall deliver the same Book to be kept, and the Licenses approbation shall be Printed with it.

"Every Merchant of Books or other, shall Import Books in the Port of London, and not elsewhere, without the License of the Archbishop, or Bishop of London; and before delivery out, or exposing to sale, shall give a note of them to the said Archbishop or Bishop. No Persons shall open any Packs or Bales wherein Books are, nor Officers of Custom-House, suffer the same to be delivered out, upon pain to loose his place, before that the said Archbishop or Bishop have appointed some Learned Man, with one or more of the Company of Stationers to be present, and to view. And if any Heretical, Schismatical, Seditious, Scandalous, or Offensive Books be found, the same to be brought to the said Archbishop or Bishop, that the offender may be proceeded with, and the Books suppressed.

"None shall Print or cause to be Printed, or Import any Book, or Copy, or part of any Book, or Forms of Blank Bills, or Indentures, which any Patentee or Assignee, or where no Grant is, of which the owner hath right of Printing, without the License of such owner; upon pain to forfeit the same: And 6 s. 8 d. for every such Book, Copy, or Bills, or Forms. The moiety to the King, the other moiety to the owners; or in default of Suit, by them, within six moneths that moiety, to the prosecutor within a year, by Suit, in the Kings Courts at Westminster.

"The Printer shall put his name to every such Book or thing he shall Print, and shall declare the name of the Author to the Licenser, if required; upon pain to forfeit the same, and the Letters, Presses, and Instruments.

"No



§. 7. *Forging.* "No Person shall put to forge or counterfeit the Name, Mark, or  
"Vinnet, of any Person priviledged to Print, without his License, upon  
"pain to forfeit such Books or Pamphlet.

§. 8. *Buying Books.* "No Person not Licensed by the Bishop of the Diocels, nor having  
"served seven years Apprenticeship to a Bookseller, Printer, or Binder;  
"nor Freeman of *London*, as Son of these Tradesmen; nor a Member of  
"the Company of Stationers, shall receive, take, or buy to sell, put away  
"or exchange any Books whatsoever, upon pain to forfeit the same.

§. 9. *Importing.* "No Person shall Print or cause to be Printed Beyond Sea, or know-  
"ingly Import or Consent to the Importation of any *English* Book, or  
"whereof the greatest part is *English*, upon pain of Forfeiture thereof.

§. 10. *Alien.* "No Alien, except such as be Free-Printers or Stationers of *London*,  
"shall bring in or vend by himself, or any other Books, of any Language,  
"except Licensed by the Archbishop or Bishop of *London*, upon pain of  
"forfeiture thereof.

§. 11. *Presses.* "No Person shall erect any Press, or Printing-house, or demise any  
"House or Room to that purpose, without notice given to the Master  
"or Warden of the Company of Stationers thereof. No Carpenter,  
"Joyner, or Smith, shall make any Press; nor Founders make any Letters,  
"nor import any Letters, nor buy such Letters, but upon such notice gi-  
"ven, upon pain every one to forfeiture 5 *l.* One moiety to the King, the  
"other moiety to the prosecutor.

§. 12. *Printers.* "None shall be admitted a Master Printer, until by death, or other-  
"wise they be reduced to Twenty, beside the Kings Printers and Univer-  
"sities; from thenceforth only Twenty to be continued, and but Four  
"Master Founders: And upon death or removal, the Archbishop or Bi-  
"shop of *London* to nominate others to supply; who before they shall use  
"the Trade, shall in the *Kings Bench*, or before one or more Justices of  
"Assize, or the Justices of Peace at their Quarter Sessions, become bound  
"with Sureties in 300 *l.* not to Print any Book without License.

"No Master Printer shall keep above two Printing-Presses at once,  
"unless he be Master or Upper-warden of the Company, who may keep  
"three and no more, unless Licensed thereunto by the Archbishop or Bi-  
"shop of *London*.

§. 13. *Apprentices.* "A Master Printer or Master Founder, that hath been Master or  
"Upper-warden of the Company, may have three Apprentices at one  
"time and no more. He that is of the Livery may have two and no more;  
"he that is of the Yeomanry of the Company, may have one and no more:  
"And if any Apprentice run away, or be put away, he may not take an-  
"other until the others name be rased out of the Hall Book, and never ad-  
"mitted again.

§. 14. *Journey- men.* "The Master Printers or Master Founders, shall see Journey-men-  
"Printers that are Free, and able, and honest, to be employed: And if  
"such Journeyman repair to such Master Printer, or Master Founder, not  
"having Journeyman, although he can do his work by himself and Ap-  
"prentice, such Master must receive him or forfeit 5 *l.* One moiety to  
"the King, the other moiety to the prosecutor within six moneths. And if,  
"such Journeyman shall refuse such employmen, or neglect it, when under-  
"taken, he shall suffer three moneths imprisonment, at the least, without  
"Bail, upon conviction by two Witnesses, before one or more Justices  
"of Peace, who shall examine the matter, and commit him to Gaol.

§. 15. *Englishmen.* "No Master Printer or Founder shall imploy about Printing, any  
"other then *Englishmen* and Freeman, or Sons of Freeman, or Apprentices  
"to these Trades.

"One

“ One or more of the Messengers of the Kings Chamber, by Warrants §. 16.  
 “ under His Majesties Sign Manual, or under the hand of one or more of *Searching*  
 “ His Majesties Principal Secretaries of State; or the Master and Wardens *and Seiz-*  
 “ of the Company of Stationers, or one of them, may with a Constable *ing.*  
 “ take such assistance as they think fit; and at what time they think fit, to  
 “ search all Houses, Shops, Printing-houses, and Ware-houses, where they  
 “ know, or probably suspect any Books or Papers to be Printed, Stitched,  
 “ or Bound; and to view and see the same, and to examine if Licensed,  
 “ and to demand a sight of the License; and if Unlicensed, to seize them  
 “ with the offenders, and to bring them before one or more Justices of  
 “ Peace; who shall commit such offenders to prison, till they be tried, ac-  
 “ quitted, or convicted, and punished: And if they find any Book or part  
 “ of Book or Books Unlicensed, containing Matters contrary to the  
 “ Doctrine or Discipline of the Church, or against the State and Govern-  
 “ ment, they may seize them, and bring them before the Archbishop and  
 “ Bishop of London, or Secretaries of State, or one of them who shall take  
 “ such course for the suppressing of them as they shall think fit.

“ All Printers, Founders, and other Persons working in those Trades §. 17.  
 “ offending against this Act, and shall be thereof convicted by verdict, *Punish-*  
 “ confession, or otherwise, shall for the first offence be disabled to use his *ment, and*  
 “ Trade for three years: And for the second offence be disabled for ever, *by whom.*  
 “ and receive such punishment by Fine, Imprisonment, or Corporal  
 “ punishment, not extending to Life or Limb; as the Justices of the  
 “ Kings Bench, or of Oyer and Terminer, or of Assize, or of the Peace  
 “ in their Quarter Sessions, shall be thought fit to be inflicted.

“ Justices of Peace, in their Quarter Sessions, shall hear and deter-  
 “ mine such offences by Indictment or Information, and shall certify year-  
 “ ly all Fines, and shall make Process and Execution, as in other Cases  
 “ by Law they may.

“ Every Printer shall reserve three Copies of the best and largest §. 18.  
 “ Paper, of every Book Printed or Reprinted; and shall before vending, *Copies.*  
 “ bring them to the Master of the Stationers Company, one whereof for  
 “ the Kings Library, and one for each University.

“ Nothing in the Act to infringe the Rights of either the Universities, *University.*  
 “ as to Licensing or Printing in either the Universities.

“ No House of a Peer, or other Person not free of the recited Trades, *Search.*  
 “ shall be searched, but by the Kings Warrant under his Sign Manual, or  
 “ under the hand of one or both Secretaries of State.

“ This Act was to continue for two years, to commence from June *Continu-*  
 “ the Tenth, 1662. But by another Act made 16 Car. 2. c. 8. the said first *ance.*  
 “ Act was continued until the end of the next Session of Parliament. And  
 “ by the Act of 17 Car. 2. c. 4. the same first Act is continued until the end  
 “ of the first Session of the next Parliament.

Prophecies. CHAP. LXXVII. V. 47.

“ T Oo true is that of the sharp French Historian Comines, lib. 6. of §. 1.  
 “ his *Commentaries Tribunal Angli Plurimum vaticiniorum*, and great  
 “ mischief have arisen from the multitudes too great credulity to (and  
 “ others phantastical publication, and setting on foot) false Prophecies;  
 “ against which evils were the Statutes of 33 H. 8. 14. & 3 E. 6. 15. made;  
 “ but they being expired was made the Statute of 5 El. 15. whereby it is  
 “ provided, That if any shall publish or set forth by Writing, &c. Speech  
 “ or

"or Deed, any fond phantastical or false Prophecy, upon, or by occasion  
 "of any Arms, Fields, Beasts, Badges, or things accustomed in Arms, Cog-  
 "zances, or Signets; or by reason of any time, year, day, name, bloodshed,  
 "or war, to make any rebellion or disturbance in the Realm, and other  
 "the Queens Dominions; he shall be imprisoned for a year, without Bail,  
 "and forfeit x l. And for the second offence be imprisoned for life, and  
 "forfeit all his Goods. A moiety to the King, the other to the profe-  
 "cutor.

§. 2. "Justices of Peace have authority to hear and determine these  
 "offences, so as the party be accused within six moneths.

§. 3. It seemeth by the general words of the Statute, that every Justice of <sup>P. Just. 21.</sup>  
 Peace may imprison (by the space of one year, without Bail) such as ad- <sup>P. Propri.</sup>  
 visedly shall publish any false Prophecies (contrary to the tenor of the Sta-  
 tute, 5 Eliz. 15.) to the intent thereby to make any Rebellion, Insurrection,  
 or other disturbances within the Kings Dominions. "But *Quere* hereof,  
 "for they are so inabled as Justices of Assize are, which is in their Courts,  
 "and imprisonment is to insue conviction; which, as it seemeth, must be  
 "in the Sessions as a Court.

Prison. CHAP. LXXVIII. K. 43.

§. 1. **A** Ny Justice of Peace, having sent or committed to the Gaol an Of- <sup>2 Jac. 10.</sup>  
 fender (for any offence or misdemeanor) if the Offender (having <sup>P. 7, l.</sup>  
 means or ability thereto) shall refuse to bear and defray the charges of  
 such as shall convey and guard him or them to such Gaol, or shall not at  
 the time of their commitment, pay or bear the same, Then the said Justice  
 may give his Warrant under his Hand and Seal (to the Constable of the  
 Hundred or Constable of the Town) where such Offenders shall be dwel-  
 ling, or from whence he shall be committed, or where the said Offender  
 shall have any Goods within that County or Liberty, to sell so much of the  
 Offenders Goods, as by the discretion of the said Justice will satisfie such  
 charges, &c. the appraisment to be made by four Inhabitants of the Parish  
 where such Goods be, (yielding to the Party the overplus of the Money :)  
 And where the Offender hath no such Goods, then the charge thereof  
 must be born by the Town where the Offender was taken, and the taxa-  
 tion made on the Town for that purpose, must be allowed under the Hand  
 of one Justice of Peace; and by like Warrant from such Justice, the  
 Goods of the person refusing to pay such taxation, may be distrained and  
 sold by the Constable and Church-wardens by appraisment made by four  
 Inhabitants, rendring the overplus.

§. 2. <sup>Arrest.</sup> <sup>Fees.</sup> "The next Justice of Peace, or the Quarter Sessions, may adjudge  
 "what is fitting to be taken for each nights lodging, or other expences,  
 "by any Under Sheriff, Bailiff, Sergeant, or other Officer that hath any  
 "person in his custody, by vertue of any Process or Warrant, while he  
 "is under Arrest, and before he is carried to prison. 22 & 23 Car. 2.

"Three Justices of Peace, whereof one to be of the *Quorum*, may  
 "settle what Fees any person shall pay for their commitment, discharge, and  
 "Chamber-rent. 22 & 23 Car. 2.

§. 3. <sup>Charity.</sup> "All Justices of Peace shall use their indeavor and diligence to exa-  
 "mine and find out all Legacies and gifts for the benefit of Poor Prisoners  
 "for Debt, and to send for Deeds, Wills, Writings, and Books of Ac-  
 "count,



"compts, and any person concerned therein; and to examine them upon Oath, and to order and settle the same. 22 & 23 Car. 2.

"Which Legacies, Gifts, Rates of Fees, and the future Government of Prisons, shall be signed and confirmed by the Justices of Peace, and the Judges of the Circuits, and fairly written, and hung up in a Table in every Gaol, before the first day of November, 1671. And be Registered by the Clark of the Peace, and after such establishment, no other greater Fees to be taken. 22 & 23 Car. 2.

"The Justices of Peace, at their Quarter Sessions, may provide a stock of Materials to set Prisoners on work, in such manner as other County charges are levied and raised: Provided, no Parish be rated above six pence the week; and may provide fit persons to oversee them, and make Orders therein, and alter or amend them. 19 Car. 2. c. 4.

"The Sheriff or Person having the custody of the Gaol, by consent of four Justice of Peace (*Quotum viris*) upon emergent occasions, may provide other safe places for removal of sick, or other persons to be there kept, and conveyed to Gaol-delivery. The like may be done in Corporations. 19 Car. 2. c. 4.

Purveyors. CHAP. LXXIX. V. 44.

IF any Person within five miles of Cambridge or Oxford, shall refuse reasonably to serve the Provision of the said Universities, then may the Vice-Chancellor, and any two Justices of Peace within the same University, Town, or County, under their Hands and Seals, allow any the Kings Purveyors to provide any Corn or Victual of any such person, to the use of the King, as they lawfully may in other places, without the said Precinct.

The Vice-Chancellor (or his Commissary for the time being) in either of the Universities, with any two Justices of Peace of the same County, may by the Oaths of Twelve Men, inquire of, and punish the offences of Purveyors, Takers, Badgers, Loaders, Poulters, or other Ministers for the Kings Majesty, and of all other common Poulters, &c. committed contrary to the Statutes for the Priviledges of the Universities, &c. *scil.* In taking or bargaining for any victual or grain, within Cambridge or Oxford, or within five miles of either of them; or in taking, or bargaining for any victual or grain brought within the said five miles by any common Minister of any Colledge or Hall, to be spent there; without the License of the Chancellor, or Vice-Chancellor in writing, under the Seal of their Office; or not according to such License: And every such Offender shall forfeit the quadruple value of such grain or victual, so taken or bargained for, and shall suffer imprisonment three moneths without Bail; which punishments the said Vice-Chancellor, &c. and two Justices of Peace may see duly executed accordingly.

If any Buyer, or other Officer of any Lord, or other person (not only for the King and Queen, and their Houses) do take any Victual, Corn, Hay, Carriages, or any other thing whatsoever, of any of the Kings people, in any wise against their will (without lawful bargain between the said Buyer and Seller made) then upon request made to the Major, Sheriff, Bailiff, Constable, Officer, or other the Kings Ministers (under which word Ministers, the Justices of Peace be also comprehended) of the Cities, Boroughs, Counties, or places, where such taking shall happen to be, the said Major, Sheriff, Minister, and Justice of Peace, shall presently take and arrest such Buyer

13 Eliz.  
21. P. 33.  
1 Jac. 25.  
21 Jac. 28.  
3 Car. 4.

2 & 3 P. &  
M. c. 15.  
13 El. 21.  
P. Just. 60.  
P. Purv.  
32.

23 H. 6.  
c. 14.

\* Cromp.  
62. 1.

§. 1.  
universi-  
ties.

§. 2.

§. 3.

Buyer and Officer so offending, and them shall send to the Kings next Prison, there to remain without Bail, until they have redelivered the said Goods so taken, or the value thereof.

§. 4.  
Taken away.

"But it being impossible to regulate these Purveyors by the many Laws made against them, and that on the utmost Penalties by the Statute of 12 Car. 2. c. 24. confirmed by 13 Car. 2. c. 7. It is enacted, That no sum or sums of Moneys, or other thing shall be taken, levied, &c. for, or in regard of any Provision, Carriages, or Purveyance for the King, His Heirs or Successors.

"No person by Commission, &c. or otherwise by colour of Purveyance, for the King or Queen of England, or for any Children of any King or Queen, or their Household, shall take Timber, Fewel, Cattle, Corn, Grain, Malt, Hay, Straw, Victual, Carriage, or other thing whatsoever, from any person, without the owners free consent had without menace or enforcement; nor shall summon any Carriages for such use (but this, as to Carriages is altered by 13 Car. 2. c. 8. & 14 Car. 2. c. 26.) without the owners consent.

"No preemption shall be allowed or claimed, in behalf of the King, Queen, or their Children, in Market or out of Market; but the Kings Subjects may sell and dispose of their Goods as they list.

§. 5.  
Penalty.

"If any person shall make Provision or Purveyance for the King, Queen, or Children, or impose any Carriages or things, on any pretence or colour of any Warrant whatsoever. The Justices of Peace, or two, or one of them that dwell near; and the Constables of the Parish or Village, may, and are hereby enjoined to commit, or cause, &c. the offenders to the Gaol until next Sessions, there to be indicted and proceeded against for the same, at the request of the party grieved; and the party shall have his Action for treble Damages, and treble Costs.

See more of Purveyors, tit. Fellons. §. 4 & 5.  
And see tit. Carriages.

## Quakers. CHAP. LXXX.

§. 1.  
Assemblies.

"Persons so called, may not assemble themselves together above five in number, of the age of sixteen years or more, under pretence of Religious Worship, not established by Law, upon penalty for the first offence, upon conviction by Verdict or Confession, or by notorious evidence of the fact, to pay a Fine not exceeding 5 l. for the first offence; and after conviction for the first, being convicted of a second offence, 10 l. to be levied by Warrant of the Parties before whom the conviction shall be, and for want of distress and non-payment within one week after conviction: For the first offence imprisonment in Gaol, or House of Correction, three moneths; the second offence six moneths, without Bail, which penalties shall be employed for maintaining the House of Correction; the third offence, the party offending shall abjure the Realm, or otherwise the King may give order to transport the offender to any of His Majesties Plantations Beyond the Seas.

"And Justices of Oyer and Terminer, Affize, Gaol-delivery, and Justices of the Peace in open Sessions, may hear and determine the same offences within their respective limits. And any Justice of Peace, Major, or chief Officer of a Corporation, may commit to the Gaol, or bind over persons with sufficient Sureties, in order to their conviction.

'But

‘But such Persons as after Conviction shall take such Oaths (for refusing whereof they stand convicted) and give security to forbear meeting in any such unlawful Assembly, shall be discharged of all the said Penalties.

‘And Peers or Lords of Parliament to be tried for every such third offence by their Peers.

Recusants. CHAP. LXXXI. V. 45.

“**T**His word *Recusant* is now become of that import and known signification, to describe and design a person by, that on the account of adherence to the Church and Court of *Rome*, in her pretended and falsely claimed Supremacy over all other Churches in Spiritual Matters (under which Head, she also would comprehend all Temporal Affairs, as well of the highest as lowest rank; for these may be serviceable in some way or other to her ends, at least, by Construction,) doth deny to Temporal Princes, claiming under God, Imperial Thrones, and justly possessing them, and to the King of *England* in particular; that Supremacy that they all lawfully may, and do some of them actually claim, as their great charge and duty; and which by the Statute of 26 H. 8. c. 1. is justly united to the Imperial Crown of this Kingdom.

“For the Exactions of that Church and Court proving intollerable, and their ends and designs proving dangerous to Temporal Government, the same magnanimous King assisted with his Parliament, did effect that which other Princes, even in Popish times, and in Popish Countreys sought to redress. Who although they cut off some Boughs and Branches, yet leaving the Root untouched, the Tree grew even to a monstrous height and bredth. This wise Prince laid the Ax to the Root by the Statute of the 26 H. 8. c. 1. having by the Statute of 24 H. 8. c. 12. discharged all Appeals to *Rome*, and put the Causes in a right Channel to receive a just and righteous decision. And by the Statutes of 25 H. 8. c. 20. & 26 H. 8. 3. prevented the Court of *Rome* from receiving First Fruits for Ecclesiastical Livings, and taken care for a Succession of Archbishops and Bishops: And also by the Statute of 25 H. 8. 21. taken off the payment of all Impositions to *Rome*, the Clergy having in Convocation recognised that King to be Supreme Head of the Church, and taking care for the due management of this asserted Jurisdiction.

“Thus stood the Kings Supremacy all the residue of the Reign of *Henry* the Eighth, and *Edward* the Sixth his time, and *Queen Mary*, although an intire Papist, yet kept *Supremum caput* in her stile, and thereby summoned her first Parliament; and soon after omitted it, and the Statutes made in her Fathers time for asserting the Kings Supremacy were repealed. But her Authority being short, 1 *Eliz.* c. 1. those Statutes of Repeal, were repealed, and consequently the Statutes by *Queen Mary* repealed were revived. By which, as that Statute recites, all usurped and foreign Jurisdiction was put away; and the ancient Jurisdctions, Superiorities, and Preheminences of Right belonging to the Imperial Crown of this Realm thereunto united, by reason whereof the Subjects were kept in good order, and disburdened of great and intollerable Exactions. And by that Statute of 1 *Eliz.* 1. an Oath was directed for good Subjects to take; the Form you may see, *cap.* 4. §. 5. and a Law made the same year, *cap.* 2. for establishing a Common Prayer



§. 3.  
Defection  
by the  
Popes  
means.

"Book in *English*, and Uniformity in Divine Service, and requiring all persons to come to Church, and hear the same, under divers Penalties.  
"Now although the Common Prayers and Service of the Church were in *English* all *Edward* the Sixth his time, yet the Kings Subjects came to Church and received the Sacrament all his time, and no open defection was on that account all his time. And although the Common Prayer Book and Service, received some alteration more different from that of *Rome* in 1 *Eliz.* Yet until the Eleventh year of Her Reign, did all Her Subjects repair to Church promiscuously, without any discrimination. So that the Bishop of *Rome* perceiving his Authority at last gasp, by his Bulls interdicted the Kingdom, absolved Her Subjects from their obedience to their Prince, and thereby wrought that Schism which those that profess obedience to that See, have ever since maintained; and had not the Pope then interposed, it is probable a perfect union had been in the *English* Church, which will be more reasonable to believe, if we consider how few persons quitted their Livings and Dignities, for refusing Communion with the *English* Church, and refusing the Oath prescribed by 1 *Eliz.* 1. namely, not much above a 100 of 9000. and more, as *Camden* witnesseth.

"After which practices, this State thought it necessary to provide for its self; and thereupon the Statute of 5 *Eliz.* 1. was made, That any that maintained the Bishop of *Rome's* authority, should incur a premunire. And the Statute of 13 *Eliz.* 1. against such as levied War, or intended bodily harm to the Queen. And another 13 *Eliz.* c. 2. against such Bulls, and the bringing over and publishing them; and the Statute of 23 *Eliz.* 1. against reconciling to *Rome*; and the Statute of 27 *Eliz.* 2. for departing of Priests and Jesuites; and the Statutes of 29 *Eliz.* 6. against Frauds in Conveyances were made.

§. 4.  
Sectaries.

"Near which time, there arose another sort of people called by 35 *Eliz.* 2. Sectaries, and disloyal Persons who did oppose the Queens Authority in Causes Ecclesiastical, but not upon Popish designs, and on that account forbore to come to Church, against whom that Statute is made.

§. 5.  
First mention of Recusants.

"The first Statute I meet with, wherein the word *Recusants* is mentioned, is that of 35 *Eliz.* 1. which mentioned the Statute of the 23 *El.* 1. to be made against Recusants, which was against the Popish only. And then comes 35 *Eliz.* 2. that mentions a *Popish Recusant*. Which word is plainly taken from refusing to take the Oath of 1 *Eliz.* 1. And refusing to read or hear Common Prayer, prescribed by 1 *Eliz.* 2. And to express the words of those Statutes, is a refusal with obstinacy.

§. 6.  
Recusants of two sorts.

"So that now there being a twofold Recusancy, Popish and Sectarian, it will be necessary to observe and distinguish the Laws made against them.

§. 7.  
Statutes.

"The Statutes now in force against Recusants of all sorts, seem to be 1 *Eliz.* 1. 1 *Eliz.* 2. 8 *Eliz.* 1. 23 *Eliz.* 1. 5 *Eliz.* 1. 13 *Eliz.* 2. 35 *Eliz.* 1. And 35 *Eliz.* 2. 1 *Jac.* 4. 3 *Jac.* 4. 3 *Jac.* 5. 7 *Jac.* 2. 7 *Jac.* 6. 29 *Eliz.* 6. 3 *Car.* 2. 27 *Eliz.* 2. All which are yet in force, and particularly 35 *Eliz.* 1. is by 16 *Car.* 2. c. 4. declared to be in force. And all the rest, except 35 *Eliz.* 1. against Sectaries, were perpetual. All which by 1 *Jac.* 4. are ordered to be put in due and exact Execution, I call that of 35 *Eliz.* 1. a Law against Sectaries, for so the Preamble mentions it to be; and by an Exception therein contained, Popish Recusants are excepted. And I observe some material differences between them.

I. The

" First, the Statute of 35 *Eliz.* 1. requires Conformity from all persons, or else inflicts Abjuration. The Statute of 35 *El.* 2. for Non-conformity from persons of mean Estates only, and that the residue repair to their dwellings, confinement there, and Forfeiture of Goods and Land.

" Secondly, The Statute of 35 *El.* 1. is Temporary to the end of the next Session of Parliament, when it might have expired, had not some clamorous persons inormities revived it: But the Statute of 35 *El.* 2. is perpetual.

" Thirdly, No married Women are punishable by 35 *El.* 1. but are thereout excepted; but by 35 *El.* 2. married Women are declared to be within all Branches and Penalties of it, but Abjuration.

<sup>1 El. 2.</sup> " The Matter of Recusancy stands in two particulars, first, Absent-  
ing from the Church; secondly, Refusing the Oath prescribed by 1 *El.* 1. and 3 *Jac.* 4. §. 7.  
Two points  
of Recu-  
sancy.

" All and every persons, inhabiting within this Realm, or other the Kings Dominions, shall (having no reasonable excuse to be absent) endeavor themselves to resort to their Parish Church or Chappel accustomed, or upon reasonable Let thereof, to some usual place where Common Prayer, and such Service of God shall be used in such time of Let, upon every Sunday and Holiday, and there remain orderly and soberly, during the time of Common Prayer, Preaching, and Service, upon pain of punishment by the Censures of the Church; and to pay for every offence 12 *d.* to be levied by the Church-wardens, to the use of the Poor by Distress. §. 8.  
Absence  
from  
churches

<sup>23 El. 1.</sup> " The Statute of 23 *El.* 1. saith, That every person of sixteen years of age which shall not repair to some Church, Chappel, or usual place of Common Prayer, but forbear the same contrary to 1 *El.* 2. And being thereof lawfully convicted, shall forfeit for every moneth 20 *l.* &c.

" If any Subject shall not resort to Church, Chappel, or other place appointed, &c. every Sunday, and hear Divine Service, according to 1 *El.* 2. One Justice, upon Confession of Oath of Witness, shall call the party before him; and if he can make no excuse, the Justice shall give a Warrant to the Church-wardens to levy 12 *d.* for every default, by Distress; and if no Distress, to commit him till payment, 3 *Jac.* 4. So as the party be impeached within one moneth.

Godbolt.  
Rep. 148.

" 1. Note, that in an Indictment upon 1 *El.* 2. it need not be averred, That the offender was an Inhabitant; for that ought to come of the other side. See *Anne Mannocks Case.* M. 3 *Jac.* 1. Cases there-  
upon.

" 2. Note where the Statute of 23 *El.* 1. says, being thereof convicted, does not intend a former Conviction, but a Conviction in the same Action; as is resolved in *Dr. Fosters Case.*

Moates  
Rep. 606.

" 3. Note where the Statute says 23 *El.* every person of sixteen years, &c. an Indictment that saith, *Quod A. B. de &c. Existens Etat. 16. Annorum, &c.* This *Existens* shall go to the time of the offence, and not to the time of the Indictment. *Talbots Case.*

Bulfer 3;  
p. 87.  
Hob. p.  
179.

" 4. Note, *Feme Coverts* are within the Statutes of 1 *El.* 2. & 23 *El.* 1. touching all the Penalties for absence from the Church, and an Information lies against the Husband for the same, as was resolved in *Laws Case.* P. 13 *Jac.*

Co. 11. 91,  
& 63.

“ 5. Note also, that the Penalty of 12 d. a Sunday, by 1 El. 2. & “ 3 Jac. 4. and of 20 l. per mensem, by 23 El. 1. shall be both “ paid.

“ 6. Note, the Statute of 1 El. 2. extends to Holidays as well as Sun- “ days; but the Statutes of 23 El. 1. & 3 Jac. 4. extend only “ to Sundays.

“ 7. Note also, this repairing to Church every Sunday, must be as “ well to Evening Prayers, as to Morning Prayers; for it “ ought to be an intire Day, and an intire Service. And so Sir “ Richard Hutton, one of the Judges of the Court of Common “ Pleas, did deliver it in his Charge at Cambridge, Lent Assizes, “ Anno 1 Car. Regis; and therewith agreed Sir Robert Bartlet “ at Summer Assizes, Anno 9 Caroli Regis.

“ And because 1 El. 2. extends to Holidays, it is convenient to observe “ which are Holidays: And as to that, I refer you to the Statute of 5 & 6 “ E. 6. c. 3. And the Rubrick of our present Service Book, now confirmed “ by 14 Car. 2. c. 4.

§. 9.  
Oath.

“ The Oath of Supremacy must be taken by Spiritual Persons, before “ such as have power to admit them; and so of Lay Persons, preferred by “ the King to any Lay Office, Ministry, or Service, before such as shall ad- “ mit them to that Office, or before such persons as by the Kings Commission “ shall be appointed; and if such person refuse, he is disabled to take that “ Office: But if any person having any Estate of Inheritance in the Office, “ shall first refuse, and afterwards during his life, take it, he shall enjoy it, “ *vide* the Oath. *Hic cap. 4. §. 5.*

§. 10.  
Maintain-  
ing Foreign  
Authority.

“ If any shall by Writing, Printing, Teaching, Preaching, express “ words, deed, or act, maintain, set forth, or defend the Authority or Ju- “ risdiction, Temporal, or Ecclesiastical, of any Foreign Prince, Prelate, “ State, or Potentate, formerly claimed or usurped, or shall put in use “ or execute any thing for maintenance or defence of the same, every “ such offenders, their abettors, &c. convicted thereof after the course of “ the Common Law, shall loose to the King all their Goods and Chattels, “ real and personal; and if the offender have not 20 l. in Goods, over and “ besides his Goods he shall be imprisoned for a year.

Penalty.

“ And if the offender be a Spiritual Person, he shall forfeit all his “ Spiritual Promotions, and the next Patron or Donor, may present, as “ if he were dead; for the second offence, he shall incur a Premunire; and “ for the third, suffer as for Treason, but there must be two witnesses, “ and they brought face to face; and as touching aiding, &c. it must “ be proved by two witnesses, that the person had knowledge of the “ offence.

§. 11.  
Oath.

“ All Persons admitted *Ad ordines Sacros*, or taking any degree in the “ University, School-masters, and Teachers of Children; and all Persons “ taking any degree of Learning at Common Law; and all Attorneys, “ Prothonotaries, and Philizers; and all Persons admitted to any Ministry, “ or Office belonging to the Canon Law, or any other Law allowed in “ England, or that shall belong to any Court, shall before admission, &c. in “ open Court, or before Commissioners take the Oath. The Lord Chan- “ cellor or Lord Keeper may direct Commissions to tender the Oath to “ any persons, without further Warrant.

Refusing.

“ The Persons compellable to take that Oath, and refusing, shall incur “ a Premunire.

“ The



35 El. 1. "The persons having power to tender the Oath, shall within forty days, if the Term be open, or the first day of the next Term after the forty days, return the same refusal into the *Kings Bench*, upon pain of One hundred pound. And the Sheriff of the County, where the *Kings Bench* is, may impanel a Jury; and upon the evidence of that Certificate, and other evidence, may indict the party.

35 Eliz. 1. "If any person above sixteen years of age that absents from Church §. 12, S. 12.  
"by a moneth, shall practice, go about, or perswade any Subject or Person, S. 12.  
"in the Queens Dominions, to oppose Her authority Ecclesiastical, and  
"shall move or perswade any to abstain from Church, or receiving the  
"Communion, or to be present at Conventicles; or if he shall be pre- Conventi-  
"sent at Conventicles, being thereof convicted, shall be committed to cles.  
"prison, without Bail, until he conform and make the Submission requi-  
"red by that Act, if within three moneths after such Conviction, he  
"shall not conform and submit, being required by the Bishop of the  
"Diocese, or a Justice of Peace, or the Minister or Curate, he shall in  
"open Sessions, or Assizes, or Gaol Delivery abjure the Realm, and  
"depart at such Haven, Port and time, the Justices shall assign him, which  
"Abjuration the Justices, shall Record and certifie to the Assizes. 35 §. 13.  
"Eliz. 1. Abjuration.

"The Oath of Abjuration may be taken by the Justices of Peace  
"of such Recusants, in this Form, or to this effect.

35 Eliz. 1. "You shall swear, That you shall depart out of this Realm of England, Oath of  
"and out of all other the Kings Majesties Dominions; and that you Abjuration.  
"shall not return hither or come again into any of His Majesties Dominions,  
"but by the License of Our said Sovereign Lord the King, or of His Heirs. So  
"help you God. See *Stamf.* 119. vide *Wilk.* 40.

35 Eliz. 1. "And such Recusants thereupon shall depart out of this Realm, Departure.  
"at such Haven and Port, and within such time as shall in that behalf be  
"assigned and appointed by the said Justices of Peace, unless he be  
"letted and stayed by such lawful means or cause as the Common Law  
"doth allow in Cases of Abjuration for Felony, &c. 35 El. 1.

35 Eliz. 1. "If any such Recusant shall refuse to make such Abjuration, or after Not going  
"such Abjuration made, shall not go to such Haven, and within such  
"time as is so appointed him; and from thence depart out of this  
"Realm, according to this Statute, or after such departure, shall re-  
"turn or come again into any His Majesties Realms or Dominions,  
"without His Majesties special License in that behalf first obtained,  
"in every such case the person so offending shall be adjudged a Felon.  
"Ibid.

35 Eliz. 1. "The Justices of Peace before whom any such Abjuration shall be Certificate  
"made, shall cause the same to be presently entered upon Record before  
"them, and shall certifie the same at the next General Gaol Delivery to be  
"holden in the same County. 35 El. 1.

35 Eliz. 1. "If after Conviction, and before required to abjure, the party re- Submission  
"pair to some Church or Chappel on some Sunday or Holiday, and hear  
"Divine Service; and before the Sermon or reading of the Gospel, make  
"publick Declaration of his Conformity in the Form therein exprest,  
"viz. I A. B, &c. the party offending shall be discharged of all Penal-  
"ties, &c.

35 Eliz. 1. "The Minister or Curate shall forthwith enter it into a Book, Cert. f. etc.  
"and within ten days certifie the same to the Bishop of the Diocese.

Relapse.

"If the party shall afterwards relapse, and refuse to go to Church, <sup>35 Eliz. 1.</sup>  
 "or shall go to Conventicles, he shall stand in the same plight, as if no  
 "submission had been made. 35 Eliz.

Penalties  
Courts.

"The Penalties by 23 Eliz. 1. and 35 Eliz. 1. shall be recovered to <sup>35 Eliz. 1.</sup>  
 "the Queens use, by Action of Debt, Bill, Plaint, or Information, in the  
 "Kings Bench, Common Pleas, and Exchequer; and a third part shall go to  
 "charitable uses. 35 Eliz. 1.

§. 14.

Popish Re-  
cusants  
confined.

"Every Person born in England, or made Denizen, above sixteen <sup>35 Eliz. 2.</sup>  
 "years of age, having a place of abode, and being a Popish Recusant,  
 "that shall be convicted of absence from the Church, and being in Eng-  
 "land at the time of such Conviction, shall within forty days after such  
 "Conviction, if at liberty; or if restrained, within twenty days after,  
 "shall repair to his place of abode, and shall not remove five miles from  
 "thence, upon pain to loose his Goods and Chattels, and all his Lands,  
 " &c. for his life. But if he have no place of abode, he shall within the  
 "time aforesaid, repair to the place where he was born, or his Father  
 "or Mother dwells, upon pain of Forfeiture as aforesaid: And being come  
 "to such place, shall within twenty days present himself, and give his  
 "name to the Minister or Curate, and to the Constable, &c. And the  
 "Minister or Curate shall enter his name in a Book, to be kept in the  
 "Parish; and the Minister and Constable shall certify the same to the next  
 "Sessions, and the Justices shall enter it in the Rolls.

§. 15.

Abjuration.

"A convicted Popish Recusant of small ability (not having Twenty <sup>35 Eliz. 1.</sup>  
 "mark Freehold per annum, or Forty pounds in Goods, nor being a *Feme*  
 "*Covert*) that shall not repair to his place of usual dwelling, or place of  
 "birth, or where his Father or Mother is dwelling; and there notifie  
 "himself to the Minister and Constables, according to the Statute of 35 El.  
 "1. Or shall afterwards remove above five miles from the same. If after  
 "he be apprehended, and shall not conform himself within three moneths,  
 "in coming usually to Church, and in making such publick submission, as  
 "in the said Statute is appointed, being thereunto required, then any two  
 "Justices of Peace, or Coroner of that County, may require such offender  
 "to abjure the Realm, and may assign him the time, and Haven, &c. And  
 "every such offender, shall upon his Corporal Oath, before the said Justi-  
 "ces, abjure this Realm of England, and all other the Kings Dominions  
 "for ever.

"The Abjuration must be entered and certified, as herein is directed  
 "by 35 Eliz. But because that of 35 Eliz. 1. was made against Sectaries,  
 "and this of cap. 2. against Popish Recusants, I have so distinguished,  
 "them; and having observed some difference in penning the two Acts,  
 "the only remaining difference is in the words of Submission in the Acts  
 "that of Sectaries by 35 El. 1. being thus.

§. 16.

Submission  
of Secta-  
ries.

"I A. B. do humbly confess and acknowledge, That I have grievously <sup>35 Eliz. 1.</sup>  
 "offended God, in contemning Her Majesties godly and lawful Government  
 "and Authority, by absenting myself from Church, and from hearing Divine  
 "service, contrary to the godly Laws and Statutes of this Realm; and in  
 "using and frequenting disordered and unlawful Conventicles and Assemblies,  
 "under pretence and colour of Exercise of Religion. And I am heartily sorry  
 "for the same, and do acknowledge and testify in my Conscience, that no other  
 "Person hath or ought to have any Power or Authority over Her Majesty. And  
 "I do promise and protest, without any dissimulation, or any colour, or means  
 "of any dispensation, That from henceforth I will, from time to time, obey and  
 "perform Her Majesties Laws and Statutes, in repairing to the Church, and  
 "hearing

"bearing Divine Service, and do my utmost endeavor to maintain and defend  
"the same.

35 El. 2. "That of Popish Recusants by the 35 Eliz. 2. being thus, 1 A. B. §. 17.  
"do humbly confess and acknowledge, That I have grievously offended God in <sup>Submission</sup>  
"contemning Her Majesties godly and lawful Government and Authority, by <sup>of Recu-</sup>  
"absenting myself from Church, and from bearing Divine Service, contrary <sup>sants.</sup>  
"to the godly Laws and Statutes of this Realm. And I am heartily sorry for  
"the same, and do acknowledge and testify in my Conscience, That the Bishop  
"or See of Rome, hath not, nor ought to have any Power or Authority over  
"Her Majesty, or within any Her Majesties Realms or Dominions. And I do  
"promise and protest without any dissimulation, or any colour, or means of any  
"dispensation, That from henceforth I will from time to time, obey and per-  
"form Her Majesties Laws and Statutes in repairing to the Church, and bear-  
"ing Divine Service, and do my utmost endeavor to maintain and defend  
"the same.

35 El. 2. "Which Submission by 35 El. 2. is in the same manner to be required  
"and made, and to have the same advantage, and to be certified in the  
"same manner as by 35 El. c. 1. And the like Provision touching Relapse  
"Women shall be comprehended in, and bound by every Branch of that <sup>Women.</sup>  
"Statute, except those of Abjuration.

"All fraudulent Conveyances made by Persons that come not to §. 18.  
"Church, whether upon power of revocation, or with any intent for the <sup>Fraudulent</sup>  
"maintenance of himself or family, are void. 29 El. 6. <sup>Conveyan-</sup>  
<sup>ces.</sup>

"Convictions of Recusancy shall be in the Court of Kings Bench, §. 19.  
"Assize or Gaol Delivery, and not elsewhere, and shall be certified and <sup>Conviction,</sup>  
"estreated into the Exchequer the next Term, after such Conviction in <sup>whereas</sup>  
"such convenient certainty for the time, and other circumstances, as that  
"the Exchequer may Award Process for Seizure of the Lands and Goods of  
"such as have not paid the Forfeiture 27 El. 6. But see *Pye and Lovels case*.  
"Hab. 204. It was resolved, That an Information or Action of Debt lay  
"in the Common Pleas, notwithstanding this Statute: For this Statute ex-  
"tends only to Indictments for the Queens benefit, and not to Informa-  
"tions.

29 El. 6. "Such as are convicted, shall pay there Forfeitures into the Exche- §. 20.  
"quer, at two times in the year, without any other or further Conviction, <sup>Forfeiture.</sup>  
"having not conformed 29 El. 6. And if they be not paid, the Process shall  
"Issue to seize the Goods, and three parts of the Lands.

29 El. 6. "No Indictment shall be quashed for not mentioning the offender to §. 21.  
3 Jac. 4. "have been in England, nor shall any Indictment be reversed for lack of <sup>Indictment.</sup>  
"Form, or for other Matter whatsoever, save only by the direct Traverse  
"of not coming to Church. 29 El. 6. 3 Jac. 4. But if he go to the Church  
"where he most abides, or if none such, to the Church next adjoining  
"to his dwelling house, and there hear Divine Service, and receive the  
"Sacrament; he shall be admitted to a full Discharge, Reverse, and undo  
"the same Indictments, and all Proceedings thereupon.

29 El. 6. "Upon such Indictment at Assizes or Gaol Delivery, Proclama- §. 22.  
3 Jac. 4. "tion shall be made, that the offender shall render his body to the <sup>Conviction</sup>  
"Sheriff before next Assizes or Gaol Delivery. And if he do not ap- <sup>by Procla-</sup>  
"pear, he shall stand convicted as upon tryal, and now by the 3 Jac. 4. <sup>mation.</sup>  
"Justices of Peace, may hear, inquire, and determine of offences for  
"not coming to Church and receiving the Sacrament, as Justices of  
"Assize may do by former Laws, and may make Proclamation upon  
"such



- “such Indictments for the Parties to render themselves to the Sheriffs,  
 “&c. Or else convict and certifie them as is appointed by 29 Eliz. 6.  
 “But the Render must be to the Sheriff, Bailiff, or Gaoler of the Liberty,  
 “&c. And the Forfeiture must be paid into the Exchequer, and Certificates  
 “of such Recusancy, as by the Statute of 29 El. 6. is directed.
- §. 23. *Kings session.* “The Kings Majesty may refuse the 20 *l. per menssem*, and take to the 29 El. 6.  
 “two parts of the Lands, and all the Goods, &c. and an Advowson is 1 Jac. 4.  
 “without that Clause, *Jones Keep. p. 20. &c.*  
 “The King shall seise two parts only of the Recusants Estate to satis- 1 Jac. 4.  
 “fie the 20 *l. per menssem*, but not the third part, either in the hand of the  
 “Ancestor or Heir: But after the death of the Ancestor, the two parts shall  
 “remain liable to the Arrears of 20 *l. per menssem*.
- §. 24. *Conformity.* “Any Popish Recusant that conforms, shall within a year next after, 3 Jac. 4.  
 “receive the Sacrament, and so once every year after, or forfeit 20 *l.*  
 “for the first year, 40 *l.* for the second year, and 60 *l.* for the third year,  
*Sacrament.* “and 60 *l.* every year after, until he received it; and if he receive it and  
 “again offend in not receiving a year, he shall forfeit for every year 60 *l.*  
 “&c. 3 Jac. 4.
- House.* “A Recusants house shall be reserved to him, and the Kings two parts 3 Jac. 4.  
 “shall not be demised to a Recusant.
- §. 25. *Conformity.* “If a Recusant reform, and be obedient to the Laws and Ordinances 1 Jac. 4.  
 “of the Church, and duly go to Church, and continue there during Ser-  
 “vice and Sermon, he shall during the time of such Conformity, be dis-  
 “charged of all Penalties. 1 Jac. 4.
- Heir.* “If a Recusant die, and his Heir be no Recusant, he shall be dis-  
 “charged of all Penalties, in respect of his Ancestors Recusancy; or  
 “if the Heir be a Recusant, and afterwards conform, he shall be in like  
 “manner discharged: But if the Heir be within sixteen years of age, and  
 “at sixteen shall become a Recusant, he shall be charged with the Penalties  
 “run upon his Ancestors, until he do conform; but then shall be dis-  
 “charged.  
 “If such offender conform, or die, no forfeiture of 20 *l.* a moneth,  
 “or seisure, shall insue upon full satisfaction of all Arrears. 29 Eliz. 6.
- §. 26. “Any person guilty of any offence against that Statute, except 23 Eliz.  
 “Treason, and misprision of Treason, which shall before Judgment  
 “conform before the Bishop of the Diocess, or before the Justices  
 “before whom he shall be indicted, arraigned, or tried, having not made  
 “the like submission upon his tryal, for the first offence shall upon his Re-  
 “cognition of such submission in open Assizes or Sessions of the County  
 “where he is resident, be discharged of all offence, except Treason, and  
 “misprision of Treason.
- §. 27. *Servant.* “If any person shall willingly maintain, retain, relieve, keep, or har- 3 Jac. 4.  
 “bor in his house, any Servant, Sojourner, or Stranger, who shall forbear  
 “for a moneth together, to hear Divine Service, not having a reasonable  
 “excuse, shall forfeit 20 *l.* for every moneth, &c.  
 “Any that shall keep or retain in his, her, or their Service, Fee, or 3 Jac. 4.  
 “Livery, any person that shall forbear going to Church by a moneth, shall  
 “for every moneth he shall so keep, forfeit 100 *l.*  
 “But a Man may keep his Father, Mother, or Ward, &c. 3 Jac. 4.
- Justices of Peace.* “Justices of Peace may hear and determine all offences of that Sta- 3 Jac. 4.  
 “tute, except Treason.
- §. 28. *Wives.* “Wives shall not forfeit for not receiving the Sacrament, during 3 Jac. 4.  
 “marriage, nor Husbands for their Wives, not receiving.

“By

23 El. 1. "By the Statute of 1 El. 2. Justices of Oyer and Determiner, and of §. 29.  
 "Assize, have power to inquire and determine the offences; but by 23 El. Justice of  
 1 El. 2. "1. the Justices of Peace have also power to inquire and determine there- Peace.  
 "of, and of the offences the party must be indicted at the next Sessions,  
 "by 1 El. 2.

23 El. 1. "The Justices of Peace may inquire of the offences against the 23 El.  
 "1. And the Statutes made 1, 5 & 13 El. touching acknowledging Her  
 "Majesties Supream Government in Causes Ecclesiastical, and other mat-  
 "ters touching the Service of God, or coming to Church, or establishing  
 "true Religion in this Realm; as other Justices therein named, may do,  
 "and may hear and determine all offences against this Act, except Treason  
 "and Misprision of Treason.

"All Forfeitures of Money shall be divided into three parts, one third §. 30.  
 "part to the Queen for her own use; another third part to the Queen for Forfeitures.  
 "the use of the Poor of the Parish, where the offence is committed; to be  
 "delivered by the Principal Officers of the Exchequer, without further  
 "Warrant; and the other third part, to the Prosecutor in any Court of  
 "Record, &c.

5 El. 1. "Justices of Peace, in Sessions, have power to inquire of all offences §. 31.  
 "against 5 El. 1. Against such as shall maintain the Authority of the Bishop Justice of  
 "of Rome, and shall make Certificates within forty days, after the Indict- Peace.  
 "ment into the Kings Bench, or every one in default, forfeits 100*l*.  
 "5 El. 1.

3 Jac. 4. "Any two Justices of Peace, the one being of the Quorum, may out §. 32.  
 "of Sessions, require any person of the age of eighteen years or above, Oath of  
 "which is convicted or indicted for any Recusancy, other then Noble-men Obstinacy.  
 "or Noble-women, for not repairing to Divine Service; or which have  
 "not received the Communion twice the year past; or which travelleth  
 "the Countrey, and is unknown (and being examined upon Oath) shall  
 "confess, or not deny themselves to be Recusants; or that shall confess, or  
 "not deny, that he or she had not received the Sacrament twice the year  
 "past, to take the Oath of Allegiance appointed by the Statute 3 Jac. c. 4.  
 "And if such person shall refuse to answer upon Oath, such Justices of  
 "Peace examining him as aforesaid, or to take the Oath of Allegiance,  
 "then the said two Justices shall commit the same person to the Common  
 "Gaol, there to remain without Bail until the next Assizes, or Quarter  
 "Sessions; but Noble-men and Noble-women are excepted, as not to be  
 "dealt withal herein by the Justice of Peace.

"Which Justices shall certifie under their hands to the next Sessions, Certificate.  
 "the names, &c. In which Sessions, the Oath shall be again tendered to  
 "them; and if they, or any other shall refuse, he or they so refusing, shall  
 "incur a Premunire, except Femer Covert, who shall be committed till  
 "they will take it. The Oath, vide hic cap. 4. *Premunire*  
*Wom.*

1 Jac. 7. "Also any two Justices of Peace may take the said Oath of Allegi-  
 "ance of such persons as have charge of Castles, Fortresses, Block-houses,  
 "or Garrisons; and of all Captains, having charge of Soldiers within this  
 "Realm, and upon refusal, may commit the offender, being of the age of  
 "eighteen years, to the Common Gaol, there to remain without Bail till  
 "the next Assizes, or Quarter Sessions, 7 Jac. 6.

7 Jac. 6. "Also by the same Statute 7 Jac. c. 6. any two Justices of Peace, the  
 "one being of the Quorum, may require any other Person or Persons, Man  
 "or Woman, be they Recusants, or not of the age of eighteen years or  
 "above (under the degree of a Baron or Baronness) to take the said  
 "Oath, and may commit them as aforesaid, upon their refusal.

"And

- §. 33. *Oath.* "And by the said Statute, if any Person whatsoever of the age of 7 Jac. 6.  
 "eighteen years, under the degree of a Baron, shall stand, and be pre-  
 "sented, indicted, or convicted, for not coming to Church or receiving  
 "the Communion, before the Ordinary, or any other, having lawful  
 "power to take such Presentment or Indictment; or if the Minister, Petty-  
 "Constable, and Church-wardens, or any two of them, shall complain to  
 "any one Justice of Peace, near adjoining, and the said Justice of  
 "Peace shall find cause of suspicion; then that Justice, or any one other  
 "Justice of Peace, within whose Commission or Power such Person shall  
 "be, upon notice thereof, shall require such person to take the said Oath:  
 "And if any person shall refuse to take the Oath tendered to him or her as  
 "aforesaid, then such Justice or Justices shall commit such offender to the  
 "Common Gaol, there to remain without Bail, till the next Assizes or  
 "Quarter Sessions.
- Certificate.* "The said two Justices of Peace shall certifie in writing, subscribed 3 Jac. 4.  
 "with their hands, at the next Quarter Sessions, the names and place of  
 "abode of such Persons, as have so taken the said Oath before them, by  
 "force of the Statute of 3 Jac. 4.  
 "And it seemeth requisite, That the Justice or Justices of Peace do  
 "make like Certificate at the next Assizes or Quarter Sessions, of such per-  
 "sons as have taken the said Oath before them, by force of the Statute  
 "7 Jac. 6.
- §. 34. *Submission after Reconciliation.* "Such persons as have been reconciled to the Pope, if they shall return 37 El. 2.  
 "into the Realm; and thereupon within six days, next after their return,  
 "shall submit themselves to His Majesty, and His Laws, before any two  
 "Justices of Peace, jointly or severally, of the County where they shall  
 "arrive; the said Justices may take such Submission, and withal may take  
 "their Oath of the Supremacy, and their Oath of Allegiance. And the  
 "said Oaths so taken, the said Justices shall certifie at the next Quarter  
 "Sessions, upon pain of 40 l.
- §. 35. *Seminary.* "Any two Justices of Peace of the County where any of His Ma- 37 El. 4.  
 "jesty's Subjects (not being a Jesuite, or other Popish Priest, &c.) brought  
 "up in any Seminary, shall arrive within six moneths next after Procla-  
 "mation to be made, in that behalf, in the City of London, under the  
 "Great Seal of England, may (within two days next after such return) re-  
 "ceive his Submission to His Majesty, and His Laws, and take his Oath to  
 "the Supremacy.
- Submission.* "The Justice or Justices of Peace, that shall receive or take any Sub- 37 El. 4.  
 "mission or Oath as aforesaid, by force of the Statute 37 El. c. 2. shall cer-  
 "tifie the same into the Chancery, within three moneths after such Sub-  
 "mission, upon pain to forfeit 100 l. 37 El. c. 2. P. Jesuites, 11.
- §. 36. *Women.* "If any Married Woman under the degree of a Baroness, being law- 7 Jac. 6.  
 "fully convicted as a Popish Recusant, shall not within three moneths  
 "after such Conviction, repair to the Church and receive the Communi-  
 "on, &c. Any two Justices of Peace (the one being of the Quorum) may  
 "commit her to prison, there to remain without Bail, until she shall con-  
 "form herself, &c. unless her Husband shall pay the King for the Wives  
 "offence for every moneth 10 l. Or else the third part of his Lands and  
 "Tenements at the Husbands choice, for so long as she remaining a Recu-  
 "sant convict, shall continue out of prison; during which time, and no  
 "longer, she may have her liberty.
- §. 37. *Presentments.* "The Church-wardens and Constables of every Town, Parish, or 3 Jac. 4.  
 "Chappel, or some, or one of them; or if none, then the Constables of  
 "the Hundred, as well in places exempt as not exempt, shall once every  
 "year



"year present the monethly absence of all Popish Recusants from the Church, and the names of their Children nine years of age and upwards, abiding with their Parents; and their Age, and the names of their Servants at the Quarter Sessions, which shall be received and entred without Fee, by the Clerk of the Peace or Town Clerk respectively; or else every Church-warden, Constable, or High Constables, shall for every default of presenting loose 20 s. And every Clerk of the Peace or Town Clerk, for not recording 40 s. And if upon such Presentment the party shall be convicted (being not before convicted) the party making such Presentment, shall have 40 s. of the Recusants Goods, and Estate, to be levied in such form as the major part of the Justices, by Warrant, under their Hands and Seals, shall appoint.

3 Jac. 4. "Every Person going Beyond Seas to serve any Foreign Prince, State, or Potentate, and shall not take the Oath before the Customer or Comptroller of the Port, or their Deputy or Deputies, shall be adjudged a Felon, 3 Jac. 4. §. 38.  
Serving  
Beyond Sea.

3 Jac. 4. "or any Person that hath borne, or shall bear any office or place of Captain, Lieutenant, or any other office or charge in Camp, Army, or Company of Soldiers, or Conductor of Soldiers, shall go voluntarily out of the Realm to serve any Foreign Prince, State, or Potentate, or shall serve them before they shall with good Sureties become bound in 20 l. with condition not to be reconciled, &c. nor to enter into any practice against the King or Realm, but shall disclose it, shall be a Felon. Which Bond shall be given before the Customer, &c. 3 Jac. 4. Bond. Which Bond and Oath he shall certifie into the Exchequer once every year, or forfeit 20 s. for every Oath, and 50 l. for every Bond not certified, Certificate.

8 Jac. 4. "The Branches of Treason in reconciling, &c. or being reconciled, Reconci-  
ling. shall be proceeded upon in the Kings Bench, Assize, or Gaol Delivery, as if the offence had been committed in the County where he is taken, 3 Jac. 4.

"See the Penalties of conveying a Child, or any other, under his Government, beyond the Seas, to enter into any Colledge, &c. or to repair to them for Instruction, or to be resident in any Popish family, and be there instructed by any Popish person, or to be sent, or to go, or continue there for those ends, and to send any Money, &c. to; or for the maintenance of any there, or under the name of Charity, &c. towards the relief of any Priory, &c. 1 Jac. 4. 3 Jac. 5. 3 Car. 1. 2. §. 39.  
Sending  
Beyond Sea  
for Educa-  
tion.

"But of those offences, I take it, the Sessions cannot meddle with or inquire.

"The Penalty of Reconciling, &c. and being reconciled, &c. See tit. Treason.

3 Jac. 5. "All such Armor, Gunpowder, and Munition, as a Popish Recusant hath in his House or Houses, or elsewhere, or in the hands of any other of his Disposition, shall be taken from him by Warrant of four Justices of Peace at their general Quarter Sessions (other then necessary Armor, in the discretion of the Justices, for the defence of his person and house) and shall be kept at the costs of such Recusants, in such place, as the Justice shall appoint, 3 Jac. 5. §. 40.  
Armor.

3 Jac. 5. "After any Warrant be granted from any four Justices of Peace, in Sessions, for the taking away of the Armor of any Popish Recusant Convict; if any such Recusant having any such Armor, Gunpowder, or Munition, or if any other person having any such Armor to the use of "any

"any such Recusant, shall refuse to declare unto the said Justices of Peace, or any of them, what Armor he or they have, or shall hinder or disturb the delivery thereof, to any of the said Justices, or to any other person authorised by their Warrant, to take and seise the same; then every such offender shall be imprisoned by Warrant of, and from any two Justices of Peace of such County, by the space of three moneths without Bail.

§. 41. "No Popish Recusant convicted, shall come to the Court or House 3 Jac. 5.  
Coming to Court. "where the King, or Heir-apparent is, unless commanded by the King or Warrant from the Council, or any of them, upon pain to forfeit 100 l.

"A moiety to the King, another moiety to the discoverer and prosecutor, in any of the Kings Courts of Record. 3 Jac. 5.

§. 42. "He that cannot satisfie the Money forfeited within three moneths, Want of Satisfaction. "shall be committed to Prison, untill he have paid, or conform. And a Man having Service in his House, and going four times a year to some Church or Chappel shall incur no penalty. Service in House.

§. 43. "Before some Justice of Peace of the County, Liberty, or Limits, 3 Jac. 5.  
Child. Oath. "where the Parents of a Child sent Beyond Seas, without License, did dwell; such Child must take the Oath of Allegiance, expressed 3 Jac. c. 4. And they that were Beyond Seas, before the making of this Act, are to take the same Oath within six moneths after their return, before some Justice of Peace where such persons inhabit, before they can take the benefit of a Gift, Conveyance, Devise, or Discent, &c. of any Lands or Tenements, &c. 3 Jac. cap. 5.

§. 44. "Any two Justices of Peace, from time to time, may search the Houses 3 Jac. 5.  
Books. Search. "and Lodgings of every Popish Recusant Convict, and of every person whose Wife is a Popish Recusant Convict, for Popish Books and Relicks of Popery; and they may presently deface and burn such Books and Relicks, as they shall find and judge not convenient for them: Yet if it be a Relick of any price, the same is to be defaced at the General Sessions of the Peace, and to be restored to the owner.

§. 45. "Any Popish Recusant that shall dwell in London, or within ten miles 3 Jac. 5.  
London. "of it, which be indicted or convicted of Recusancy, or shall forbear to come to Church three moneths, shall within ten days after such Indictment or Conviction depart thence: And if he live in London, or ten miles, &c. shall give up his name to the Lord Major; and if he live above ten miles, then to the next Justice of Peace, upon pain to forfeit 100 l. &c.

§. 46. "No Recusant Convict shall practise the Common or Civil Law, as 3 Jac. 5.  
Bear no Office. "Counsellor (not as Chancellor, as the Print is) Clerk, &c. Nor practise Physick, nor as an Apothecary, nor be a Judge, Minister, Clerk, or Steward of any Court, or keep any Court, nor bear any Office in any Camp, Troop, or Company of Soldiers, nor bear any Office in any Ship, Castle, or Fortres, but be utterly disabled, and shall forfeit 100 l. &c. 3 Jac. 5.

"A Recusant Convict, or having a Wife that is a Popish Recusant 3 Jac. 5.  
Convict, shall not after his or her Conviction, exercise any Publick office or charge in the Commonwealth, except such Husband and his Children nine years old, and his Servants or Household, shall once every moneth, having no excuse, at Church hear Divine Service, and his Children and Servants, at times appointed, receive the Sacrament, and bring up his Children in the true Religion, 3 Jac. 5.

§. 47. "A Popish Recusant convicted, shall be reputed an excommunicated 3 Jac. 5.  
Disability. "person, until Conformity, and take the Oath of 3 Jac. 4. And it may be "pleaded

"pleaded in Disability in all Actions, except for such of his Lands, &c. as are not to be seised, &c. 3 Jac. 5. And the Sheriff and Officer may upon an *Excommunicato capiendo*, break the House to apprehend him.

"3 Jac. 4.

3 Jac. 5. "Any Man being a Popish Recusant Convict, that shall be married §. 48.  
"otherwise then according to the Orders of the Church of England, shall be *Marriage*  
"disabled to be Tenant by the Curtesie; and a Woman otherwise married,  
"shall loose her Dower, Joynture, Widows Estate, and Free Bench, or  
"any Portion of Goods, by the Custom of any City, &c. And if such  
"Man marry a Woman, that hath no Land, whereof he may be intituled,  
"As Tenant by the Curtesie, he shall forfeit 100 l. &c. 3 Jac. 5.

3 Jac. 5. "If a Popish Recusant Baptize not his Child at Church, or place ap- §. 49.  
"pointed for Baptism, by a lawful Minister, within a moneth, if it may  
"be carried thither, otherwise by the Minister of the Parish, &c. He if  
"he live a moneth after the birth (or if he die within a moneth) the Mo-  
"ther shall forfeit 100 l. A third part to the King, a third part to the Pro-  
"secutor, and a third part to the Poor.

"If a Popish Recusant not Excommunicated, shall not be buried in a §. 50.  
"Church or Church-yard, or not according to the Law Ecclesiastical; the *Burial*  
"Executor or Administrator knowing the same, or the party causing the  
"same, shall forfeit 20 l. A third part to the King, a third part to the  
"Prosecutor, and a third part to the Poor, &c. where he died.

3 Jac. 5. "No Popish Recusant Convict, shall present to any Ecclesiastical §. 51.  
"Living, Free-school, Hospital, or Donative, but be disabled; but the *Presenta-*  
"Chancellor and Scholars of Oxford to those in *Sussex*, &c. and the Chan- *tors*  
"cellor and Scholars of Cambridge to those in *Essex*, &c. But they shall  
"not present any to any Ecclesiastical Living, that hath another Living  
"with cure.

3 Jac. 5. "A Popish Recusant convicted at the death of the Testator, or at §. 52.  
"granting Administration, is disabled to be Executor or Administrator, *Executors*  
"or to have the custody of a Child, or be Guardian in Chivalry, Soccage, *&c.*  
"or Nurture, and the next of Kin, to whom that Estate cannot descend,  
"that comes to Church usually, and received the Communion three times  
"that year, before he shall be Guardian, &c.

37 El. 2. "Any Justice of Peace, within the County, in which any Jesuite, or §. 53.  
"Popish Priest, or other Ecclesiastical Person, shall arrive, or land within *Jesuits*  
"three days after their landing, may take their Submission-Oath, and  
"Acknowledgment touching their obedience to the Kings Majesty, and  
"His Laws, provided in Cases of Religion; but if it be any other Sub-  
"ject, who is no Priest, &c. and yet brought up in any Seminary, they  
"must make their Submission, and take the Oath, &c. before two Justices,  
"&c. See more in this Title.

27 El. 2. "Every Subject knowing any Jesuite or Popish Priest, to be within §. 54.  
"the Kings Dominions, ought to discover the same to some Justice of *Discovery*  
"Peace, or other higher Officer, within twelve days, &c. And such Ju- *of Priests*  
"stice of Peace, ought within Eight and twenty days, after such discovery  
"made to him, to give information thereof to one of the Kings Privy  
"Council, &c. Upon pain of Two hundred marks, and upon such infor-  
"mation given by the Justice of Peace, he shall have redelivered to him  
"a note in writing, subscribed by such Privy Counsellor, &c. with his own  
"hand, testifying, that such information was made unto him.

13 El. 2. "If any Person to whom any *Agnus Dei*, Cross, Picture, Beads, or §. 55.  
"such Superstitious things shall be deliverered or offered, do disclose such *Superstiti-*  
"deliverer or offerer to any Justice of Peace, &c. That Justice of Peace, *ous things*  
"within



- “within fourteen days, must declare the same to one of the Kings Privy Council, or else he shall incur the danger of a Premunire.
- §. 56. *Answer.* “If any Person suspected to be a Jesuite, Seminary, or Massing-Priest, <sup>35 El. 2.</sup>  
 “being examined by a person having Authority so to do, shall refuse to  
 “answer directly whether he be so, shall by the person examining him, be  
 “committed to prison without Bail, till he answer directly.
- §. 57. *Discovery.* “The party that doth first discover to any Justice of the Peace, any <sup>3 Jac. 5.</sup>  
 “Recusant, or other person, entertaining or relieving any Jesuite, Semi-  
 “nary, or Popish Priest, or any Mass to have been said, or any of them  
 “that were present thereat, and the Priest that said the same, within three  
 “days after the offence: And by reason of his discovery any of the of-  
 “fenders be taken and convicted, shall be freed from danger of the offence,  
 “if he be an offender therein, and have the third part of the forfeiture  
 “which shall be forfeited by such offence, <sup>3 Jac. 4.</sup> if it exceed not 150 l.  
 “Or if above, he shall have 50 l. and the discoverer shall have a Warrant  
 “from the Sheriff or Officer that shall seise or levy the Forfeiture, to pay  
 “him out of the Money levied 50 l.
- §. 58. *Books.* “No person shall bring from beyond the Seas, not Print, Sell or Buy, <sup>3 Jac. 4.</sup>  
 “any Popish Primers, Ladies Psalters, Manuals, Rosaries, Catechisms, Mis- <sup>3 Jac. 5.</sup>  
 “sals, Breviaries, Portals, Legends, and Lives of Saints, containing Super-  
 “stitious matter, in any Language, nor any Superstitious Books in Eng-  
 “lish, upon pain of 40 s. for every Book. A third part to the King, a  
 “third part to the Prosecutor, a third part to the Poor, where such Book  
 “shall be found (not Bound as in the Print) &c.
- §. 59. *Mas.* “If any person shall say or sing Mass, being thereof convicted shall <sup>23 El. 2.</sup>  
 “forfeit Two hundred marks, and be committed to the next Gaol for a  
 “year, and from thence-forth, till he hath paid the Two hundred marks.  
 “And every person who shall willingly hear Mass, shall forfeit 200 l. and  
 “suffer imprisonment for a year.
- §. 60. *License.* “Recusants confined to five miles, may be Licensed by any four Justi-  
 “ces of Peace, with the privy and assent of the Bishop, or Lieutenant,  
 “or of any Deputy Lieutenant, residing in the said County, under all  
 “their hands and Seals, to travel about their necessary business out of the  
 “compass of five miles. But such Licenses must certifie the particular  
 “cause of the said License, and the time of their absence must therein be  
 “limited. And the party so Licensed, must first take his Oath before the  
 “said four Justices, or any of them, That he hath truly informed them of  
 “the cause of his journey, and that he shall not make any causeless stays.  
 “See the Form of such License, *hic postea, tit. Precedents.* See more *tit.*  
 “*Popish Recusants in the Appendix.* And a License otherwise is void, and  
 “going without such License, shall forfeit, as by <sup>35 El. 2.</sup> <sup>3 Jac. 5.</sup>
- “In pleading a License, he must shew that he had taken the Oath of <sup>Moore</sup>  
 “Allegiance, and that the cause of his License is true, and that it was <sup>Rep. 836.</sup>  
 “granted with the assent of the Bishop or Lieutenant, &c. And if the  
 “same person be Justice and Lieutenant, that will not serve.
- TOMMAN.* “A Woman being a Popish Recusant Convict (her Husband being not <sup>3 Jac. 5.</sup>  
 “convicted) that shall not conform and remain conformed, which shall  
 “not go to Church, nor receive the Sacrament a year before her Husbonds  
 “death, shall forfeit to the King two parts of her Joynture; and two  
 “parts of her Dower, in three parts, to be divided, and be disabled to  
 “be Executrix, or Administratrix to her Husband.

## Riots, Riouts. CHAP. LXXXII. V. 46.

Lamb. 184.  
34 E. 3. 1.  
P. Just. 18.  
Crompt. 63.  
14 H. 7. 8, 9.  
Br. Peace  
7.

Any one Justice of Peace alone, may use all good means to prevent a Riot or Rout before it be done; and for to stay it whilst it is in doing, and in the doing may take and imprison the Riotors, or bind them to their Good Behavior. But being once done, and committed, one Justice of Peace cannot make Inquiry thereof, nor Assess any Fine, nor Award any Process, nor otherwise meddle to punish it in the nature of a Riot or a Rout, but only as a Trespass against the Peace, or upon the Statutes of Northampton, or of Forcible Entries: Whereof see the title *Forcible Entry*.

§. 1.  
*One Justice Preventing*

Crompt. 55.

And yet if one Justice of Peace, sitting in a Judicial place (as in the Sessions) shall see a Riot, he may command them to be Arrested, and may make a Record thereof, and the offenders shall be concluded thereby; but if one Justice of Peace shall see a Riot in another place, and shall command them to be Arrested, and shall make a Record thereof, the offenders shall not be concluded thereby, but may Traverse it: And yet the Justice may Record it, and certify the same to the next Sessions, &c. *Cro. 41.*

*Ibid.*

If a Justice of Peace will commit a Man to Ward, pretending untruly that he did a Riot, where he did none, the Party may have an Action of Trespass against him, *Fitz. Just. 9. tamen vide Co. 8. fol. 121. a.* That the Record of a Force made by a Justice of Peace is not Traversable, for that he doth it as a Judge; and so the Justices Record of a Riot, is not Traversable. See *hic postea*; also see *Br. Judges 2. & 10.* That an Action will not lie against a Justice or Judge of Record, & 2 R. 3. 10. *hic c. 120. sc. Pro re facta judicialiter.*

Dyer 210.

Every Justice of Peace (being of and in the County, and having notice of any Riot, Rout, or unlawful Assembly) ought to have a care of the Execution of that Statute made 13 H. 4. c. 7. (*viz.* that the Riotors, &c. be Arrested, and removed) for if that Statute be not executed in every part thereof, by some of the Justices, the two next Justices of Peace shall forfeit each of them 100 L. and every other Justice of Peace within that County, in whom there shall be any default, shall be finable.

§. 2.  
*Forfeiture.*

Lamb. 321.

14 H. 7. 9. b

And therefore every Justice of Peace of the County, hearing of any Rout, or of any intention of a Riot, (without making any Precept, or tarrying for his Fellow Justice, or for the Sheriff) shall do well to go himself (if he be able) with his Servants, or other power of the County (if need be) to the place where such persons be so assembled, and to suppress them, and all such as he shall find and see riotously assembled (and armed) to Arrest them, and to force them to put in surety for the Peace, or for their Good Behavior: And for refusing to give such surety, or in default of surety, to imprison them. And also he may take away their Weapons and Armor, and seise and prize them for the King. *Vide tit. Armor, and Forcible Entry.*

Br. Peace

7.

Lamb. 79.

124.

So that one Justice of Peace seeing a Riot, may and ought to Record it, and to attach the Riotors, and to commit them, or bind them over to the Good Behavior; but he may proceed no further therein. For he cannot Fine them without Inquiry, which Inquiry must be by a Jury, and before two Justices of Peace; and may be at any time within the moneth. Otherwise, for omitting of Attaching or Arresting the offenders at the first, the Justice which saw the Riot is punishable: But the Inquiry by a Jury must be within one moneth, *sub pena* 100 L. to the two next Justices, &c. See *hic postea*.

§. 3. *Servant.* And if the Justices of Peace (being come to the place) shall not find the Riotors yet come thither, he may leave his servant there (with his Warrant in writing, or without Warrant, as it seemeth) to restrain them in their said enterprife, or else to Arrest such offenders when they shall come, if they shall offer to commit any Riot, or to break the Peace: And this for speedy remedy. 14 H. 7. 10.  
Br. Peace  
7.

So if the Justice be sick, and shall hear of a Riot, he may send his servants, or other power of the County, if need be, (with his Warrant under his Hand and Seal, or without such Warrant, by word of mouth) to the place to repress it, or to Arrest such offenders, and to bring them before him, to find Sureties for the Peace. And all this he may do without expecting the coming of any his Fellow Justices, or of the Sheriff, or Under-Sheriff: And this also for expedition. 14 H. 7. 10.  
Br. Peace  
7.

§. 4. *Proclamation.* Also one Justice of Peace, by the Statutes made 1 M. c. 12. and 1 El. 16. might have made Proclamation in the Kings name, That all persons riotously assembled, should depart to their Habitations, &c. The Form of which Proclamation you may see in the same Statute, and in P. Riots, 27. But the said Statutes are now expired. 14 H. 7. 10.  
Br. Peace  
7.

Also any one Justice of Peace (by the first *Assignavimus* in the Commission) may cause to be kept and put in execution, all other Statutes made for the repressing of Riots, Force, and Violence: But therein he must deal only according to the Form and Order in such Statutes prescribed.

§. 5. *Two Justices.* But the ordinary power of punishing of Riots belongeth unto two Justices of Peace at least; and therefore the two next Justices of Peace which dwell nearest in the County, where any Riot, Assembly, or Rout of people shall be against the Law, together with the Sheriff or Under-Sheriff of the County, upon complaint or other notice of the Riot, shall do execution of the Statute 13 H. 4. 7. (sc. of all and every part thereof respectively, as to them is appointed) every one of them, upon pain of 100 l. And in default of the two next Justices, the other Justices of Peace of and within the County (upon notice of such Riot) ought to do execution thereof, every one upon danger to be fined: But the penalty of 100 l. is only to be laid upon the two next Justices. 13 H. 4.  
7. P. 54.  
Dyer 11.  
Crompton  
Lambard

See the Case of *Drayton Bassett*, *hic antea*, tit. *Forcible Entry*; where certain Justices of Peace which were not the next, nor did not dwell nearest to the place where the Riot was committed, and yet were fined upon the Statute of 17 R. 2. c. 8. But that Riot was notorious, for there were a great number assembled in the Mannor House of *Drayton Bassett*, who did detain the same forcibly.

§. 6. *Ex Officio.* And therefore if the Riot, &c. be great and notorious, whereof by common intendment every person may take knowledge, it is not safe for the Justice or Sheriff, &c. to expect and stay till complaint thereof shall be made unto them, or that they shall have information or notice given them thereof, lest they incur thereby the said penalty of 100 l. Dyer 110.

If any one other of the Justices of the Peace of the County (besides those two which are next) shall execute this Statute, that shall excuse the two next Justices, for that the Statute giveth power herein to all Justices. P. R. 30.

§. 7. *Sheriff.* If one, or the two next Justices shall come, and not the Sheriff or Under-Sheriff, such Justices as do come, shall be excused of the forfeiture of 100 l. but though the said Justices shall be excused of the said forfeiture; yet if there cometh but one Justice of Peace, he ought to Arrest the Riotors, and to remove the force, and commit or bind over the Riotors; otherwise he is finable, &c.

And



Lamb. 322. And if there shall be two Justices present, and neither the Sheriff nor Under-Sheriff; yet those two Justices are finable, if they shall not do all that, which (without the Sheriff or Under-Sheriff) they are authorised to do by the said Statute.

Lamb. 321. But no Justice of Peace that dwelleth in another County is bound upon the said penalty of 100 l. to execute the said Statute of 13 H. 4. although he dwelleth next to the place where the Riot is, and although he be in Commission of the Peace for the County where the Riot is, as it seemeth: For the words of the Statute are, The Justices which dwell nearest in every County where the Riot shall be, and not which dwell nearest to the place where the Riot shall be; and yet it seemeth safe, that such Justices dwelling out of the County, upon notice of such Riot do come into the County, and do his indeavor to suppress the same Riot, and to execute the Statute for that he is one of the Justices of the County.

If the Sheriff or Under-Sheriff do not come, the Justices ought to send for them, as Mr. Marrow thinketh.

P. R. 30. And some seem to be of opinion, That if the Sheriff or Under-Sheriff shall not come to the Justices, being sent for to assist them, that then all the Justices of Peace dwelling near or remote, shall be excused of the same penalty of 100 l. or of any other penalty or fine; for that the said Statute doth give the Sheriff or Under-Sheriff equal Authority, and as it were joyn him in Commission in the copulative with the Justices of Peace. But others seem to be of another opinion, viz. That if the Sheriff or Under-Sheriff shall not come, yet the Justices of Peace shall be fined if they come not, and Arrest the Riotors, and do not moreover proceed to do therein all that which (without the Sheriff or Under-Sheriff) they are in any way authorised to perform.

Lamb. 321.  
Crompt. 63.

Now what the Justices of Peace may or ought to do therein (by force of this Statute of 13 H 4. 7.) without, or in the absence of the Sheriff and Under-Sheriff, is worthy consideration, as being needful for the Justices of Peace to know, and safe for them to perform, as well for the speedy preventing of such present mischiefs as may happen to the Commonwealth by such dangerous Assemblies, as also for their saving of the penalty of the Law otherwise like to lie upon them.

§. 8.  
What the Justices may do without the Sheriff.

Lamb. 313.  
322. But herein I dare not determine, finding that others (of good judgment and experience) that have written hereof, have seemed to doubt hereof, and have written sparingly hereof.

And yet there is no doubt, but that the Justices of Peace (without the Sheriff or Under-Sheriff) upon all Riots, may and ought first to go to the place, and such Riotors as they shall see or find riotously assembled, they may and ought to arrest them, and to take away their Armor and Weapons, and to remove and commit the Riotors, or may cause them to find Sureties for the Peace or Good Behavior; and for want of such Sureties, may commit them to the Gaol. All which, any one Justice of Peace may do.

P. Riots 1.  
Crompt. 67.  
b.

Also two Justices of Peace after the Riot committed (without the Sheriff or Under-Sheriff) as it seemeth, may and ought to inquire of the Riot; and if upon such Inquiry the Riot be found, the said Justices may Fine and Imprison the offenders, as hereafter appeareth.

§. 9.  
Inquiry.

But whether two Justices of Peace seeing a Riot, may record the same upon their own view, without the Sheriff or Under-Sheriff, and thereupon (without any Inquiry) may Fine them for the same, and may commit them to prison till they have paid the same Fine, is to be considered. I know the common opinion to be, That they cannot Record the Riot (without the Sheriff,

View.  
Sheriff.

Sheriff or Under-Sheriff) for, say they (by the Statute) the Sheriff or Under-Sheriff are associated to the Justices of Peace, and have equal Authority with them therein; and then consequently the Justices of Peace alone upon their own view, without inquiry, can neither fine them, nor imprison them for their Fine.

\*M. Lamb.  
thinketh it  
to be the  
Statute of  
34 E. 3. 1.  
that Fi-  
neux  
meant, ra-  
ther then  
the Statute  
of 13 H. 4.

Yet *Finoux*, Chief Justice, saith, That this \* Statute of 13 H. 4. was made for the common profit of the Realm, and for a hasty remedy, and to avoid a present mischief like to happen; and therefore shall be construed largely for the common good, and in furtherance and advancement of expedition of Justice.

Also we see, that any one Justice of Peace may do all these things, in case of a Forcible Entry, &c. Any one Justice of Peace may come with the power of the County, if need be, and may arrest the offenders, and may record the force by him viewed: And this Record shall be a sufficient Conviction, so that he may thereupon commit the offenders to the Gaol, and may fine them.

Also this Statute of 13 H. 4. doth relate to the said Statute of Forcible Entries, 8 H. 6. touching the Conviction of offenders by the Record of the Justices.

Also, by some good Authority, if two Justices of Peace (without the Sheriff) shall see a Riot, they may arrest them and make a Record thereof, and the offenders shall be concluded by such Record, for that the view of the Riot is not to be traversed, *Lamb. 313.*

Also the Statute of 34 E. 3. 1. seemeth to enable two Justices of Peace to imprison and fine Riotors, and that without inquiry, and then consequently, it seemeth they are to make a Record of the Riot. See *Lamb. 291, 292. Ideo Quere.*

And yet *Quere*, whether two Justices of Peace (upon the Statute of 13 H. 4. 7.) without the Sheriff, may not, may ought not, upon the penalty of 100 l. upon their view of a Riot, Record the Riot, and without inquiry fine the offenders, and imprison them till they have paid their Fine (as Convict by their view and Record) though this may seem to be more for the Kings advantage, rather then to hazard the Fine upon the finding it by inquiry. 'But it rather seemeth, That the Justices upon their own view of a Riot, may Record it, and commit the offenders, and then to certify or send the Record into the *Kings Bench*, where the offenders shall be fined. And this I take to be more warrantable, and safer for the Justices, if they shall not inquire thereof.

§. 10.  
Two Justices and the Sheriff.  
1. To go with Posses Comitatus.

And now to the particulars of that which the two next Justices of Peace, with the Sheriff or Under-Sheriff, must do in execution of this Statute of 13 H. 4. 7. every one upon pain of 100 l.

1. First, they shall go to the place in person, if they be able, where the riot, &c. shall be.

And they shall take the power of the County (if need be) &c. they shall have the aid of all Knights, and other temporal persons under that degree, that be above the age of fifteen years, and be able to travel: For all the Kings Subjects that are in the County where a Riot, &c. shall be, being able to travel, must be aiding and assistant to the Justices of Peace, Sheriff, or Under-Sheriff, (or other Commissioners) when they shall be reasonably warned to ride or go with the said Justices and the Sheriff, &c. in aid to resist such Riots, &c. upon pain of imprisonment, and to make Fine and Ransom to the King; which Ransom shall be treble so much at the least as the Fine, *Dyer 232.* Yet by others, by Ransom, is intended, That the party is to make his Agreement

14 H. 7. 9.  
b. Str Co.  
10. 103b.  
such a  
matter.

21 P. 6.  
f. 5.

*Fitz. Just.*  
9. 17.  
14 H. 7. 1.  
Crompt. 65.  
196.

P. Just. 16.

13 H. 4. 7.  
13 H. 4. 7.  
P. 12.

2 H. 5. 8.  
P. 12.

ment with the King, *Ad verum valorem omnium bonorum suorum mobilium.*

But Sir Edward Cooke, L. 127. saith, That in legal understanding, a *Fine and Ransom* are all one.

But it is referred to the discretion of these Justices, how many, or few, they will have to attend them in these businesses; and in what sort they shall be armed, weaponed, or otherwise furnished for it.

Lamb. 309. Again, it is not good for the Justices to assemble the power of the *§. 11.*  
Crompt. 64. County, without certain information, or knowledge of such riotous assembly;

yet if upon false information of a Riot, to be at such a place, the Justices shall cause the power of the County to be assembled, the Justices shall be excused by reason of the information; and if without information, the Justices shall think that such a riotous Assembly is made in such a place, and shall assemble the power of the County to go thither and arrest the Riotors, and when they come to the place they find a Riot there indeed, they must arrest and imprison the offenders, and shall be excused of the assembly made by them: But if they shall find no Riot there, then shall they be punished for making such an assembly of their own heads, without information.

2. All such offenders as they shall find there present, they shall arrest *§. 12*  
them, or cause them to be arrested, and shall remove the force, *Arrest.* *sc.* shall commit to prison all the Riotors, and take away their weapons.

Also it seemeth, that all such as came in the company with such Riotors, or in the company of any of them, if that the Justices shall find them there present, though they do nothing, and though they came without any intent of their parts to commit any Riot, yet they shall be arrested, imprisoned, and fined. See to this purpose in the title *Forcible Entry.*

Mar. Lec. Also all such Riotors as the Justices shall meet in their way (riotously  
8. arrayed, and coming from the place) they may arrest and imprison them,  
Crompt. 63. for that they found them unlawfully assembled; but they cannot Record any Riot by them done, for that they saw it not, yet they must afterward (as it seemeth) inquire thereof by a Jury, that so the offenders may be fined, &c. See more in this title.

But if the Justices do come and see the Riot committed, and after the *§. 13.*  
said Riotors shall escape from the Justices at that time; yet the said Justices *Record.* shall record it; but they cannot arrest them at any other time, except it be presently after, and in fresh Suit; neither can they Fine the offenders, nor award any Process against them upon that Record which they shall make; and yet for that they saw the Riot (and these Riotors that be escaped, committing the Riot) they shall Record it. But that Record shall not be kept amongst the Records of the Peace, but the said Justices shall send the said Record to the *Kings Bench*, that Process may from thence be made upon it, against those Riotors that be escaped; where also the said offenders shall not be admitted to any Traverse, but must of necessity make Fine for their said offences.

If after the Justices and Sheriff shall see the Riot, the said Riotors shall *§. 14.*  
escape, and the Justices and Sheriff shall Record the same Riot, and then *Escape.* one of the Justices be put out of the Commission, or the Sheriff, or one of the Justices shall happen to die, yet shall that Record be sent or certified into the *Kings Bench*, by the other Justice and Sheriff, *Lamb.*  
320.

But if (after the Inquiry, and before the Certificate) the Sheriff, or the *§. 15.*  
Justices shall die, or be put out of the Commission, or that their Authority *Certificate.* doth



doth cease by the death of the King, or otherwise, such Record cannot be certified without the Kings Writ of *Certiorari*. *Br. Record*. 17. 64. and *Lamb.* 320.

Good Behavior.

Also such offenders, as the Justices saw committing the Riot, though they shall escape from the Justices, yet the said Justices may after grant out their Warrants for them, and send them to the Gaol, till they shall find Surety for their Good Behavior. *13 H. 7. Cromp.* 196.

If such offenders shall be departed before the coming of the Justices, yet (upon certain information of their being there) the said Justices may also grant out their Warrants for them, and may commit them, till they have found Sureties for their Good Behavior: Or rather the Justices shall do well to proceed against them, by Inquiry, and so to fine the offenders for the King, &c. See more in this title. *34 E. 3. 1. P. Jul. 11.*

§. 16.  
Resistant.

Also in the Execution of this Arrest of the Riotors, the said Justices, &c. may justify the beating, wounding, or killing, of any of the Riotors that shall resist them, or that will not yield themselves to them. *Vide tit. Homicide, &c.* *Lamb.* 310. *Cromp.* 196.

Armor.

Also the said Justices may take from such Riotors, their Armor, Harness, and Weapons, and shall cause the same to be prised and answered to the King, as forfeited.

§. 17.  
3 Record.

3. After the Arrest made, the said Justices and Sheriff, or Under-Sheriff, shall make a Record in writing of the said Riot (*scil.* of all that which they shall see, and find done in their presence against the Law) without any other Inquiry: And that their Record is a sufficient Conviction of the offenders. *13 H. 4. C. 7. P. 1.*

View.

If two Justices of Peace shall see any making of a Riot, they may command others to Arrest the Riotors, and then make their Record thereof, and the offenders shall be concluded thereby, *Fitz. Just. of Peace*, fol. 17.

But if the Justices of Peace do not themselves see the Riot, they cannot make a Record thereof; but then they must inquire thereof.

If the Justices of Peace, &c. going to see a Riot, another Riot shall happen in their presence; they may Record this, and arrest and imprison the offenders.

Other Riot.

So if the Riotors shall make a Riot upon the Justices (and Sheriff) that do come to Arrest them for their former Riot, they may Record that also.

So if two Justices of Peace (and the Sheriff, or Under-Sheriff) shall meet for any other cause of service, or for any private business (as upon an arbitrament, or other like matter,) and a Riot shall happen to be done upon themselves, or in their sight, they may Record it, and may Arrest, and imprison the offenders.

Conclusion.

And if the Justices of Peace shall Record a Riot, and upon examination of the Matter after, it shall appear to be no Riot; or that they saw it not, or that there was no Riot at all; yet the parties shall be concluded thereby, and have no remedy (as it seemeth) and therefore the Justices shall do well to be advised what they Record. See *9 H. 6. f. 60. Br. Judges* 2. *Fitz. Just. of P. f. 17.* *9 H. 6. fol. 60. Cromp.* 63, 64.

And again, for that this Record of the Justices and Sheriff, is a sufficient Conviction in it self against the offenders, therefore it ought to be formal and certain as well for the time and place, as also for the number, Weapons, manner, and other Circumstances, because the Parties be concluded thereby, and shall not be received to Traverse, or deny it in any point. *Lamb.* 311.

The Form of the Record, *vide hic postea*.

*Lamb.* 312. & 365, 375.  
This

This Record ought to remain with one of the said Justices of Peace; and shall not be left amongst the Records of the Sessions of the Peace, it being made out of the Sessions, and not appointed to be certified thither.

P. 1. 11.  
Lamb. 312. 4. Also the said Justice of Peace (and none other Justice of Peace) §. 18.  
shall commit such offenders to the Gaol, there to remain convict by their Imprison-  
View, Testimony, and Record (as in Case of Forcible Entry) until they ment.  
have paid a Fine unto the King. Gaol.

Co. 8. 120. Also such commitment of the offenders to the Gaol ought to be done presently.

Lamb. 310. And the power of the County ought to be aiding to the Sheriff, or Under-Sheriff, for the conveying of them to the Gaol.

Crompt. 61. If the Justices of Peace, and Sheriff, or Under-Sheriff, shall Record the Riot, and shall not presently commit the Rioters to Prison; or if they shall commit them to prison, and shall not Record the Riot, they shall forfeit every of them 100 l. by the Statute of 13 H. 4. for that they have not done execution of the same Statute: For by the Statutes they shall Record and commit; and again, by the same Statutes, the offenders must be as well imprisoned as fined.

Lamb. 312, §. 19.  
557. Co. 8. 40. a. Which Fines by the Statute of 2 H. 5. 8. ought to be of Fint.  
Crompt. 16. good value, that out thereof the charges of the said Justices and other  
p. 10. Officers may be born, *sc.* their charges in going, tarrying, and returning, &c. about the Suppressing and Inquiry of such Riots; of which charges, payment shall be made by the Sheriff, by Indenture thereof made between him and the said Justices.

And yet such Fines must be reasonable and just, and *Secundum quantitatem & qualitatem delicti*, and not unreasonable and excessive (for *excessus in re qualibet jure reprobatur communi*, Co. 11. 44.) And so it is commanded by the Statutes 9 H. 3. 14. 3 E. 1. 6. 18 E. 3. 2. & 34 E. 3. 1. P. Jusf. 1. & 18.

And the reasonableness of the Fine shall be adjudged by the discretion of the same Justice of Peace. Co. L. 56. b.

Note also, that the Fine assessed in this, and such like Cases, must not be imposed upon all the offenders jointly, but must be assessed upon every offender severally. Co. 11. 43, 44.

And yet note, that in some Cases a Fine or an Amercement shall be imposed upon divers jointly; (*sc.* sometimes upon a whole County, sometimes upon a Hundred, and sometimes upon a Town, as for an escape of a Murderer, &c. whereof see *hic post.*) but that is by reason of the incertainty of the persons, and for the infiniteness of their number. Co. 11. 43.

And the said Justice shall cause the said Fine to be Estreated into the Exchequer, that so the said Fines may be levied to the Kings Majesties use; §. 20.  
and then they are to deliver the offenders again, as it seemeth: Or else the said Justices may Record such Riot by them viewed, and commit the offenders, and after certifie the Record to the Assizes or Sessions, or into the Kings Bench, as in Case of Forcible Entry. Estreat.

11 H. 4. 7.  
p. 2. 6. But if the Riot was not committed in the presence of the said Justice of Peace; or that the offenders be departed before the coming of the said Justices, and Sheriff, or Under-Sheriff, then the said Justices, or two of them at the least, within one moneth, immediately after such Riot, Assembly, or Rout, shall inquire thereof by the Oaths of a sufficient Jury to be returned by the Sheriff, (& who shall return upon every person so by him impaneled §. 21.  
Inquirer.

'impaneled in issues at the first day 20 s. at the second 40 s.') and the same Riot, &c. being found by such Inquisition, the Justices must make, or cause to be made a Record in writing, of such their Inquiry or Presentment found before them; which Record also is to remain with one of the said Justices, P. R. 29. See the Form thereof, *hic*.

The Form of a Precept to be made by the Justices to the Sheriff, to return a Jury, &c. *Vide hic postea*.

The Form of such Inquiry or Presentment. See also the title *Precedents*, *hic postea*.

This Inquiry shall not be, but where the Riotors are gone before the coming of the Justices; or where they had not the View of the Riot. Crompt. 41

It is not necessary that one of the Justices of Peace (which shall make Inquiry of a Riot) be of the *Quorum*.

Although the words of the Statute are, the same Justices (*sc.* which came to see the Riot) shall inquire; yet if any other two Justices of Peace of that County shall do it, that will suffice. Lamb. 316

Also the Justices of Peace, although they go not to see the Riot, yet they may inquire thereof within the moneth after.

*Time.* Neither is it of such necessity, to have the Inquiry within the moneth, that for default thereof the Presentment shall be void; for the Justices of Peace may inquire thereof at any time by force of their Commission; but if it be not within the moneth, then every of the two next Justices are in danger to lose 100 l. for it. And yet if these Justices do charge the Jury within the moneth; and do give day unto them for to yield their Verdict and Presentment after the moneth, the Statute is not offended. Lamb. 317

But yet it seemeth that the Justices of the Peace are not bound upon the penalty of 100 l. to inquire within the moneth of all Petty Riots, but only of such Riots as are notorious and dangerous, and in the nature of Insurrections or Rebellions.

*§. 22.* At this Inquiry, the Sheriff, or Under-Sheriff, ought to be present with the Justices of Peace, but the Sheriff, or Under-Sheriff, be now as Ministers only for the returning of the Jury (for this Inquiry) and be not herein associated with the Justices, as they were before in Arresting the Riotors, and Recording their disorder; and therefore they are now to be spared from being Judges therein: Howbeit by this their presence, they may help to espie the evil; and besides, it addeth force and credit to the Certificate. Lamb. 318

*§. 23.* If the Justices do assemble themselves, the Sheriff and the Jury, to make Inquiry of a Riot within the moneth, and the Parties be agreed amongst themselves; so as none will sollicite the Inquiry, nor give in evidence for the King upon that Riot, yet ought the Justices to proceed (*Ex Officio*) to make Inquiry of that Riot, seeing it may be that some of the Jury may have knowledge of the Riot. Lamb. 317

*Evidence.* And also the Justices ought to make Proclamation, That if any Man will give evidence for the King concerning that Riot, or (generally) will inform the Kings Justices of any Riots, Routs, &c. And thereupon some other persons may perhaps come forth to inform him therein. P. R. 29

But if (at the Parties request) the Justices shall dismiss the Jury without Inquiry, they are finable for the same. Crompt. 41

And if the Justices shall not proceed herein (*Ex Officio*) without some will give in evidence for the King. *Quere*, if they shall not be hereby in danger to lose the Hundred pound upon this Statute, for the Reasons above-said.

And



And it seemeth, that the Justices of Peace may justly bind to their Good Behavior, the Parties that first complained to them of this Riot, and have caused them to meet, and now will not prosecute the same for the King, but have agreed it.

After such Inquiry had, and the truth of the Riot found, the said Justices have authority (by the said Statute) to hear and determine the same according to the Law, viz. They may make out their Warrant, or Process, (*sc.* a *Venire facias*;) against the offenders under their own Teste (thereby to cause the offenders to come in and answer) and upon the appearance of the said offenders, the said Justices may assess their Fine, and may commit them to Prison, till they have paid their said Fine, and may deliver them after payment of the same Fine, or upon Sureties taken for it (which Sureties ought to be bound by Recognizance;) or otherwise they may receive their Traverse, and thereupon (if the matter will so serve) to discharge and dismiss them: But then the said Justices shall do well to send such Indictment or Inquisition found (and such Traverse) to the next Quarter Sessions, or into the *Kings Bench*, and there the Traverse shall be tried and determined according to Law, *P. R.* 30.

Note, that all Indictments, Inquisitions, or Presentments, taken and found before Justices of Peace, of any Riot, Forcible Entry, or other thing against the Peace, may be delivered into the *Kings Bench*, by the hands of the same Justices of Peace, before whom the same was found, or otherwise may be removed from the said Justices of Peace, before the Justices of the *Kings Bench*, by a *Certiorari*: In both which Cases the Justices of the *Kings Bench* may proceed to hear and determine the same.

Now by the Statute made 2 H. 5. c. 8. the King is to bear the charges of the Justices of Peace, which shall execute the Statute of Riots. And therefore,

Concerning the Fine so assessed by the Justices of Peace, the Justices of Peace may thereout (as it seemeth) pay the charges of the said Justices, and of the Jury (which made the Inquiry, and by whom the Riot was found) *sc.* For their Diet, and the Sheriffs Fees, &c. And then they may bring the Record of this Inquiry to the next Quarter Sessions of the Peace, and there deliver the same Record to the Clerk of the Peace, together with the residue of the Money remaining of the Fine, &c.

Also the Clerk of the Justice which maketh up the Record of this Inquiry, may have his Fees out of that Money; or else he may take of every offender Twelve pence, when they have paid their Fine: For so the Clerks of the Peace use to do.

Or rather the said Justices are to be paid their charges (in going, and continuing, in doing, and executing their said Office) by the Sheriff, by Indentures made between the Sheriff, and the said Justices; whereof the Sheriff, upon his accompt in the *Exchequer*, may have due allowance, 2 H. 5. c. 8.

But when Men are indicted of Riots (or the like) they will usually yield themselves, and pray to be admitted to their Fine (in which case the Justices of Peace commonly do assess but some small sum or fine) and upon the payment thereof, do discharge the offender; and hereby the offenders are not imprisoned, (which would work more for fear in such offenders, then such Fine) and therefore it is behoveful for the Justices of Peace to use good care and discretion herein; for by the Statute 2 H. 5. c. 8. the offenders are as well to be imprisoned, as fined, and it seemeth much more serviceable, and more agreeing with the intent of the Law. Besides, this Fine is called in divers places in the \* old Statute, Ransom, (or *Redemptio*,

Lamb. 559.  
\* Marib. c.  
1, 2, 3, 4.

in *Latin*) and seemeth by the propriety of this word to imply, That the offenders ought first to be imprisoned, and then to be ransomed, and delivered in consideration of this Fine. 'To which purpose see Mr. *Horne* in Lamb. 555. his *Mir. of Just.* l. 3. where he sheweth that Ransom is the Redemption of 'a Corporal Punishment due by Law to any offence.

And these Fines the Justices of Peace are willed by the Statute (2 H. 5. c. 8.) to put in greater sums then they were wont to be put in such cases, for the bearing of the charges of the Justices and other Officers, &c. as is before said.

At the Common Law, a Riot was punishable as a Trespass, and as well the Fine, as the imprisonment were at the discretion of the Judges; and in the same manner the Statute of 13 H. 4. inabled the Justice of Peace to punish such offenders. But now as well the imprisonment, as the Fine of such offenders are to be increased by the said Statute, 2 H. 5. cap. 8.

And therefore where the Justices of Peace are remiss herein (*scil.* in not sufficiently punishing such offenders by due Fine and Imprisonment) the Lords in the *Star Chamber*, have often assessed upon Riotors for the same Riot (for which the Justices of Peace have formerly assessed a Fine in the Country) a greater penalty, if they see cause: And yet in this case the offenders be not twice punished for one offence, but that one part of the due punishment is inflicted at one time, and part at another.

§. 28. So lastly, if the Truth or Riot cannot be found by the Justices of Peace upon such Inquiry (being hindred by the perverseness of the Jurors, or by the unlawful maintenance, countenance, or imbracery of other persons that put themselves into the cause, then within one moneth next after the Inquiry, the same Justices and Sheriff, or Under-Sheriff, shall certify before the King and His Council (to the Body and Board of the Privy Council, or into the \* *Kings Bench*, *Cromp.* 63.) So much of the Fact and Circumstances thereof, as may by any ways or means appear unto them, with the certainty of the names of the principal offenders, upon pain of One hundred pounds to every of the said Justices, Sheriff, or Under-Sheriff: And also the said Justices, with the Sheriff, or Under-Sheriff, ought in the same Certificate to certify the names of such maintainers and imbracers, with their misdemeanors; and of the time, place, and other circumstances, and the impediments, why the truth of the Riot, &c. is not found, upon pain of forfeiture of Twenty pound a piece to every of the Justices and Sheriff, *Cromp.* 63 b. & 199 b. The form of such Certificate, see *hic*.

The end of this Certificate is but only to put and force the offenders to answer thereto before the King and His Council: And though the words of the Statute do make this Certificate to be of the force of a Presentment of twelve Men against the offender; yet such Certificate is no Conviction, but that the offenders may \* *Traverse* it, by the words of the same Statute. And so this Certificate to be of the nature of a Declaration, or Indictment at the Common Law; and therefore it ought to comprehend the certainty of the time, place, persons, and other material circumstances.

\* But such Traverse and Certificate shall be sent into the Kings Bench, and there be tried. Time.

If this Certificate be not made within one moneth after the Inquiry, then is it not according to the Statute, and so not good to force the offenders to answer.

If two Justices of Peace, and the Sheriff, shall go to see a Riot, yet any other two Justices of the County may make the Inquiry, and then they all

all together, or the first two ; or the last two (with the Sheriff or Under-Sheriff) may make Certificate thereof within the moneth after that Inquisition taken.

Lamb. 320.  
Crompt. 63. Where there be several Certificates made, or that the Certificate and the Inquiry do disagree, then that shall be preferred which is best for the King.

If there shall be twenty Parties to a Riot, and the Jury shall find but ten of them guilty, yet the Justices may certify that twenty committed that Riot, and this Certificate shall stand good.

Also it seemeth, if any thing material happen to be omitted, or left out of the Inquisition, yet it may be supplied by this Certificate, and it shall stand good.

Lamb. 330. If after the Inquiry, and before the Certificate made, the Sheriff shall die, or one of the Justices be put out of the Commission, no Certificate can then be made, by the opinion of Mr. Marrow.

For the Form of such Certificate. See *hic postea*.

2 H. 5. 8.  
B. 6. Upon the default of the two next Justices, Sheriff, or Under-Sheriff, §. 29.  
Commission. for not executing the said Statute of 13 H. 4. 7. the party grieved may have Commission out of the Chancery, to inquire as well of the Riot, as of the default of the said Justices of Peace, and Sheriff, or Under-Sheriff.

2 H. 5. 8.  
T. 9. Also the Lord Chancellor of England, as soon as he shall have notice of such a Riot, shall send the Kings Writ to the Justices and Sheriff, commanding them to execute the said Statute of 13 H. 4.

And although that such Writ come not to the said Justices, Sheriff, or Under-Sheriff, yet they shall not be excused of the penalty of 100 l. aforesaid, if they make not execution of the said Statute. *Ibid.*

2 H. 5. c. 9.  
H. 6. c.  
14.  
Bail. 374. Also, if any Assemblies of People in great number, in manner of Insurrection, or other Rebellious Riots, shall be done and committed, and that such offenders shall withdraw themselves, to the intent to avoid the Execution of the Law, then upon Certificate by two Justices of Peace, and the Sheriff of that County, by Letters under their Seals to the Lord Chancellor of England, of the same Riot, and that the common voice and fame thereof runneth in the said County, the Lord Chancellor may make a *Capias* to the said Sheriff; for the apprehending of such offenders; and after, if need be, a Writ of Proclamation, That the said offenders yield themselves in the Kings Bench, at a certain day, upon pain to be convict thereof. §. 30.  
Capias.

\* Note, That for Riots in Cities or Corporations which are armed with power of Government within themselves, the Franchises may be seized, or the Corporation fined, as it hapned in the case of the Riot where Dr. Lamb was slain; the City of London upon an Information in the Kings Bench, was fined 1000 marks. *Pasch. 8 Car.*

Rogues and Vagabonds. CHAP. LXXXIII. V. 47.

THE benefit of this Law, and of the former Law, made for the setting to work, and relief of the Poor, are both of them worthy of the care of the Justices of Peace, and of their best endeavors, for the due execution thereof; for by them §. 1.  
Benefit of the Laws.

1. Idleness is very much repressed: Idleness, which of it self is the root of all evil.

2. Infinite swarms of idle Vagabonds are rooted out, which before wandred up and down, to the great danger and indignity of our Nation.

T

3. We



3. We our selves are now compelled but to relieve the poor of our own Parishes (whose conditions and estates we know) and to a certainty of gift, wherewith we are now taxed by our Neighbors; whereas before we gave we knew not what, nor to whom; and many times to such as were ready to have cut our throats, if opportunity had served them.

In this title of Rogues, I have intermingled certain Resolutions of the Judges, made upon the Statute 39 *El. c. 4.* for the better understanding thereof, which Resolutions you shall find in Mr. *Lambert.*

*One Justice may cause Rogues to be whipped.* *Testimonial* §. 2. Any one Justice of Peace may appoint all Rogues and Vagabonds which shall be taken begging, wandring, or misordering themselves, to be stripped naked from the middle upward, and to be whipped till their body be bloody, 21 *Jac. cap. 28.* 39 *El. c. 4.*  
P. Vagab.  
1 *Jac. 7.*

After such whipping, the said Justice of Peace shall make them a Testimonial under his Hand and Seal, testifying their punishment, and mentioning the day and place thereof, and the place whither they are to go, and in what time they are limited to pass thither, &c.

The Form of such a Testimonial, *vide hic.*

*Conveyance.* §. 3. All Rogues and Vagabonds are to be sent and conveyed forthwith, from Parish to Parish, by the Officers (*sc.* the Constables of every of the same) the next straight way to the Parish where they were born (if it may be known by the parties confession, or otherwise;) or, the place of birth being not known, then to the Parish where such person last dwelt by the space of one year, there to put themselves to labor; or, (it not being known where such person was born or last dwelt, then) to the Parish thorough which such person last passed without such punishment; and then the Officers of such Village or Parish, are to convey them to the House of Correction of that Limit wherein that Village is, or to the Common Gaol, there to remain and be employed in work, till they shall be placed in service for one whole year; or not being able of body, till such person shall be placed in some Alms-house of that County. P. Vagab.  
39 *El. c. 4.*  
1 *Jac. 7.*  
3 *Cal.*

“Rogues are not be sent to the House of Correction, but by Passes to the place of their Birth; and although it shall appear a person was an inhabitant a long time in another Parish, and there become impotent by any mischance in labor, and then beg; yet he shall be sent to the place of his birth, as was resolved by Sir William Jones at Worcester Assizes, Lent, 14 *Car. 1.* in the Case of one Chappel. And it was then resolved, That if a Woman, great with child, be sent to the House of Correction, and be there delivered of a child, it shall not lie upon the Parish where the House of Correction is, but shall be sent to the place from whence she was sent, as the place of her last settlement. Bailt.  
part 2  
P. 391

*Children.* §. 4. The Rogue whose place of birth, or last dwelling cannot be known, having Wife and Children under seven years of age, they must go with the Husband to the place where they were last wilfully suffered to pass without punishment; where the Children must be relieved by the work of their Parents, though the Parents be committed to the House of Correction. Bailt.  
part 2

‘A Rogue is taken at D. and will not confess the place of his birth, neither doth it appear otherwise, but that he confesseth truly his last dwelling to be at S. Whereupon he is whipped, and sent to S. and coming to S. the place of his Birth is learned to be at W. and the Rogue confesseth it to be so: In this case the Rogue is to be sent to the place of his birth, without any new Vagrancy, for his settling at S. was no legal settling. *Resol. 27.*

Again, by the Statute made 7 *Jac. 4.* all such Rogues, Vagabonds, sturdy Beggars, and other idle and disorderly persons, as shall be found and apprehended in the general privy search made by the Justices Warrant, &c. shall

shall be brought before the said Justices at their said Meeting, and shall be there punished; or by the said Justices Warrant shall be sent to the House of Correction, there to be set on work, kept, and corrected, &c.

But here, first to describe you these manner of persons, (sc. Rogues and Vagabonds) that you may the better know them.

A Vagabond (as one saith) is he which hath neither certain house, nor stedfast habitation, but liveth idly and loitering. A Man (as another describeth him) *sine re, sine spe, sine fide, sine sede*, 'or he may be called *Vagabundus quia errat per mundum*.

A Rogue may be so called, *Quia ostiatim rogat. Midsh.*

Or it signifieth an idle Beggar that wandereth from place to place, without a lawful Passport.

A Beggar, *Mendicus quasi manu dicens* (speaking with the hand) *At enim erat apud antiquos Egenum silentio manum extendere.*

And yet Vagabond in its proper sense, is one that wandereth about; and a Rogue and a Vagabond seem to be all one; for the Latin words *vagus* and *vagabundus*, signifie the one and the other. So as whosoever wandereth about idly and loitering, is a Rogue or Vagabond, although he beggeth not, *quod nota.*

"And although a Man have a certain habitation, yet if he go about "from place to place selling small Wares, he is punishable by 39 El. and "that although he be not taken wandering; for it is the wandering it self, "and not the being apprehended wandering, that brings him within the "punishment of that Statute. *King v. Hollingworth. T. 18 Jac. B. R. Rolls Rep. part 2. p. 172.*

And more particularly, all these persons hereunder mentioned, being above the age of seven years, and offending as hereunder is mentioned, shall by our Laws be adjudged Rogues, or at least shall be punishable as Rogues.

1. All persons above the age of seven years, going about begging, upon any pretence or colour whatsoever; yea, although they be licensed by any Subject, except it be in the Cases hereafter mentioned.

2. All idle persons going about the Countrey, either using any subtil craft or unlawful Games, or being Fortune-tellers, or Juglers, or using any other like crafty Science.

3. All Proctors, Patent-gatherers, or Collectors for Gaol, Prisons or Hospitals, wandring abroad.

\* 1 Jac. 7. 4. All Fencers, Bearwards, Common-players \* of Enterludes, and Minstrels wandering abroad. 21 Jac. c. 28.

\* 1 Jac. 7. 5. All Pedlers, Petty Chapmen, Tinkers, and \* Glas-men, wandering abroad, 21 Jac. c. 28. 'especially if they be unknown; or have not a sufficient Testimonial.

Resol. 10. 6. All wandering persons, and common Laborers, being able in body using loitering, and refusing to work for reasonable wages, not having living otherwise then by labor to maintain themselves, are Rogues. And yet such persons as be of any Parish, and have able bodies to work, and be no wanderers abroad out of the Parish, though they refuse to work at such wages as is taxed, \*or commonly given in those parts, are not to be sent to their place of birth or last dwelling, &c. but to the House of Correction. See *tit. Poor.*

Resol. 13. 7. Poor persons appointed to ask relief in the Parish where they *now* dwell, by the Overseers thereof, if they shall beg in any other sort then is so appointed them, or shall beg by the Highways, though in their own Parish. See 39 El. cap. 3. & Lamb. 427.

And

And yet such persons are not to be sent to their place of birth, or out of the Town, except it be to the House of Correction.

So it seemeth of all other poor persons begging in the Parish where they dwell (without the appointment of the Overseers) they are to be sent to the House of Correction. *Quere tamen.*

8. All persons wandering, and pretending themselves to be *Egyptians*, or wandering in the habit and form of *Egyptians*, not being Felons.

9. Soldiers or Mariners that shall beg (except as before, *hic & hic postea*) or shall counterfeit any Certificate from their General, Governor, Captain, Lieutenant, Marshal, Deputy, or Admiral, shall be adjudged as Common Rogues, and shall have the like punishment. But Soldiers and Mariners in divers like cases shall incur the danger of Felony. See the title *Felonies by Statute.*

*Licensed.*

10. Poor diseased or impotent persons, travelling to the Baths for ease of their griefs (and being licensed) yet if they beg; or if such person be not licensed by two Justices; or shall not return home again, according as they are limited by their said License; or shall not be provided of necessary relief, &c. for their travel, they shall be punished as Rogues.

11. A Rogue that hath been punished according to this Statute, and hath a Testimonial, if through his or her default they do not accomplish the order appointed by the said Testimonial, then are they to be whipped again as Rogues, and so as often as any default shall be found in them, &c.

12. A Rogue, &c. that shall go with a general Passport, *sc.* which is not directed from Parish to Parish, is still to continue a Rogue, and may be punished by whipping again.

So also may such a Rogue, as shall carry his own Passport without a guide: For by the letter of the Statute, they are to be sent, *sc.* conveyed from Parish to Parish by the Officers of every of the same.

13. Servants departing out of service, (*sc.* forth of one City, Town, or Parish to another, or out of one Hundred or County, to serve in another) without a Testimonial, &c. or which shall be taken with any counterfeit or forged Testimonial, shall be whipped as Vagabonds.

14. Persons infected, or dwelling, or being in any house infected with the Plague, that contrary to the Commandment of any Officer, shall wilfully go abroad and converse in company, shall be punished as Vagabonds.

15. So all persons being able to labor, and thereby to relieve themselves and their families that shall run away, or threaten to run away, and leave their charge to the Parish, &c. 21 *Jac. cap. 28.*

§. 6.

*Incorrigible Rogues.*

But such offenders last mentioned are to be dealt withal by two Justices of Peace, *sc.* All such persons so running away, shall be taken to be Incorrigible Rogues, and shall indure the pains of Incorrigible Rogues, *sc.* they shall be sent by two Justices of Peace, to the House of Correction, or to the Gaol, there to remain until the next Quarter Sessions, and then he or she shall be there branded in the left shoulder with an hot Iron, &c. And from the Sessions shall be sent to the place of their last dwelling. 1 *Jac. 7.*

And all such persons so threatening to run away (the same being proved by two sufficient Witnesses upon Oath, before two Justices of Peace of that Division) shall be by the said Justices sent to the House of Correction (unless such person can put in sufficient Sureties for the discharge of the Parish) there to be detained and dealt withal as a sturdy and wandering Rogue; and from thence to be delivered at the Quarter Sessions, or at the meeting of the Justices in that Division, made for a general privy search for the apprehending of Rogues, according to this Statute of 7 *Jac. cap. 4.* And are not otherwise to be delivered out of the House of Correction.

But



But upon such their delivery, they are not to be sent to their place of Birth, (as wandering Rogues) but to the place of their dwelling, if they have any; if not, then to the place where they last dwelt by the space of a year, &c.

And so of persons infected, &c. with the Plague, and punished as Vagabonds as afore.

39 El. 4.  
P. Vag. 2. v. No Child under the age of seven years, shall be adjudged a Rogue §. 7.  
(within the Statute of 39 El. 4.) But it seemeth such Children being va- *Children under seven*  
grant, must be sent to, and placed with the Father, or Husband of the Wife;  
and if he be dead, then with the Mother, (where she was born, or last dwelt  
by the space of one year.) And such Children once thus settled or placed;  
must there remain, and not be sent from thence to their place of Birth;  
though after the Parents die, or run away, or that the said Children grow  
above the age of seven years, yea, and though the said Children after beg,  
and prove Vagrant in that Town, for there they must be set to labor. See  
Resol. 4, 9, 10.

"One D. C. with a Child under seven years of age, wandered, and  
"desired a Warrant to go to E. where she had some friends, and went  
"through several Parishes, until she came to G. and there died. The  
"Question was, Whither the Child should be sent. Also one F. a  
"wanderer came to her sister at D. with three Children born in three seve-  
"ral Parishes, and died. The same Question arise and resolved by Jones  
"and Whitlock, Justices of Assize at Stafford Summer, 3 Car. That these  
"Children should be sent to the places where they were born, and not  
"where their Mothers died *in transitu*, and were so sent and settled as Poor,  
"and not as Vagabonds; for a Child within seven years of age shall not be  
"said to be a Vagabond: And as they said, the place of birth, or the place  
"of their last settlement, if it may be known, are in Judgment of Law  
"said to be the places of settling. So that one be born in one Parish, and  
"afterwards is an Inhabitant in service in another Parish, and then becomes  
"a wanderer, he is to be sent to the place of his last settling. *Bulstr. part 2.*  
"p. 352.

39 El. 4.  
Resol. 4. Children above seven years of age, going abroad Vagrant, or begging  
in the Countrey, shall be punished as Rogues, and sent to their place of  
birth, &c.

Resol. 3. The Wife being a Vagrant Rogue, must be sent to her Husband, though §. 8.  
he be but a servant in another Town. *wife.*

Resol. 5. If the Husband or Wife have a house (though as an Inmate) and either  
of them rogue about, they are to be sent to the Town where that house is.

Resol. 6. No Man is to be put out of the Town where he dwelleth, nor to be  
sent to their place of birth or last habitation, but only a Vagrant Rogue, *sc.*  
such as wander abroad in the Countrey; and not such as are Vagrant, or do  
beg, in the same Town where they dwell.

Such as their Estates of their houses be expired, and servants whose  
time of service is ended, they shall not be put out of the Towns where  
they last dwelt, or served, &c. *Vide tit. Poor.*

39 El. 4.  
P. Vag. 14. The Justice of Peace dwelling in or near the place where any Seafaring §. 9.  
man suffering shipwreck shall land, may make a Testimonial under his hand *who may beg.*  
to such person (not having wherewith to relieve himself in his travel home-  
wards) setting down in such Testimonial, the place, and time where and  
when he landed, and the place of his birth or dwelling unto which he is  
to pass, limiting him therein a convenient time for his passage; which per-  
son (without the danger of this Law) in his direct passage, and within his  
time in such his Testimonial limited, may ask and receive necessary relief. *Persons suffering shipwreck.*

Soldiers,  
Sec. from  
Sta.

The Justice of Peace in, or near the place where any poor, idle, and wandering Soldier or Mariner (coming from the Seas, or from beyond the Seas) doth land, ought upon request to give him a Testimonial, under his hand, licensing him thereby to pass the next and direct way to the place whither he is to repair, expressing therein the time and place of such his landing, with the place of his dwelling, or birth, to which he is to pass, and to limit him a convenient time for his passage thither: And such person pursuing such License, may ask and receive necessary relief, without the danger of Law, 21 Jac. cap. 28. 39 El. 17. P. Mar. 5.

"And if the person fall sick in the way, he shall not incur the penalty; and if when he comes to the place mentioned in the Testimonial, he cannot get work, he may complain to two Justices of Peace, and they shall take order to set him to work: And for want of work, the Justices may tax the Hundred for his relief, until sufficient work may be had. 39 El. 17.

But now *Quere* of these persons, and see *infra*.

§. 40.  
Rogues  
whipped.  
Testimonial.

Also one Justice of Peace, (or the Constable, with the Minister, and one other of the Parish) after the Whipping of a Rogue according to the Statute, may make the said Rogue a Testimonial under their Hand and Seal, for the conveying of such Rogue according to the Statute of 39 El. 4. 39 El. 4. P. Vag.

And yet such Rogues may not beg in their travel, neither may the Constable of the Parish thorow which they pass, or any other person, give them any relief (as it seemeth) for that were contrary to the Statute 1 Jac. cap. 7. and a forfeiture of 10 s. But now for that after so many years (since the making of these Statutes) they will not be reformed of their roguish life, they are rather to be dealt withal as Incorrigible Rogues, *sc.* to be carried by the Constable before the next Justice of Peace, and then by Warrant from two Justices to be sent to the House of Correction, or to the Gaol, there to remain until the next Quarter Sessions, &c. See Statute 1 Jac. 7. And the Directions of Sir Francis Harvey at Summer Assizes 1630. *Hic postea.*

§. 11.  
Soldiers.

And as for the Soldier or Mariner (specially such as are sick, hurt, or maimed) they now are usually, or may be relieved with Money by the Treasurers of every County where they come, *viz.* with such convenient sums as may carry them to the next County; and this is by a latter Law, and therefore now it may seem unfit, That either the Constable should relieve them, or suffer them to beg or ask relief in their Towns, for so the Countrey shall be double charged towards their relief, *sc.* in paying to the Treasurer towards their relief, and again in giving them at home at their doors, 21 Jac. cap. 28. 43 El. 4. P. vag.

§. 12.  
License to  
beg.

So that I do not find, that any one or more Justices of Peace may or can, in any case License any Man to beg, or ask relief at all; but only may make a Testimonial or License in the two first former cases, *sc.* to such as suffer Shipwrack, and Soldiers or Mariners coming from the Seas, to pass from place to place; and in those two cases only the Law tolerateth them to ask and receive necessary relief, as aforesaid. For I observed before, That poor diseased persons travelling to the Baths (though Licensed by two Justices of Peace) yet they might not beg, and besides must be provided of maintenance for their travel. See more in this title before. 39 El. 4.

Likewise Poor Prisoners delivered out of Gaols, may in no wise beg, 39 El. c. 4.

I observe further, That (by that Statute 39 El. c. 3. though it be now expired) no person whatsoever, might go wandering abroad and beg, in any

any place wheresoever, by License or without, upon pain to be taken as a Rogue.

And therefore *Quere*, Of such Briefs and Licenses as lately have usually come from, or in the name of the Lord Major of *London*, licensing poor persons to travel, and to ask, or beg relief in their travel, and by general Passports, not directing them from Parish to Parish. See more in this title after *Resol.* 13.

El. 4. And yet any one Justice of Peace may License Laborers in Hay time, and Harvest time to pass from one Countrey to another to work; but not to wander or beg. See the title *Laborers*.

See 5 El. 4. And so any two Justices of Peace may make a Testimonial to Serving-  
men, (or other Servants, as it seemeth) departing from their Masters, but  
P. Labor. 4. such persons under colour thereof, may not wander up and down idly,  
7. nor beg. See the title *Laborers*. Two Justices.

39 El. 4. Any two Justices of Peace of the Limit where any Incurrigible Rogue  
P. Vag. 4. shall be taken (the one being of the *Quorum*) may commit such Rogue to  
1 Jac. 7. the House of Correction, or to the Gaol, there to remain unto the next  
Quarter Sessions of the Peace, there to be dealt withal as Incurrigible  
Rogues, according to the Statute 1 Jac. c. 7. See *hic antea*. §. 13.  
Incurrigible.

P. Vag. 11. Now these Incurrigible Rogues be such as shall either appear to be  
39 El. 4. dangerous to the inferior sort of people, or such as will not be reformed of  
their roguish kind of life. §. 14.

Of the first sort are such as shall offer any violence, or shall use any threatening speeches, or other like misdemeanors towards any person.

Of the other sort seem these which follow, and such like.

1. Such as having had punishment, and thereupon sent to their place of Birth, &c. and there settled according to the Law, shall notwithstanding fall to their roguish life again.

Refol. 71. 2. A Rogue that affirmeth, he was born in such a Town, in such a County, and is sent thither, if he were not born there in truth, he is to be said an Incurrigible Rogue, and is to be sent thence (by two such Justices as aforesaid) to the House of Correction in that County; and if there be none, then to the Gaol, until the next Sessions, there to be dealt withal according to the Statute.

Refol. 2. 3. The same course is to be observed (if it appear not where he was born) if he untruly affirm, That he was last dwelling in such a Town and County, by the space of a year, and was not.

7 Jac. 4. All persons being able to labor, and thereby to relieve themselves and their Families, that shall run away out of their Parishes, and leave their Families or Children to the Parish, shall be deemed and punished as Incurrigible Rogues. Their punishment see *hic antea*.

7 Jac. 4. Also all persons being able to labor as aforesaid, that shall threaten to run away, and leave their Families aforesaid, it being proved by two sufficient witnesses upon Oath, before any two Justices of Peace of that Division, shall be sent by the said Justices to the House of Correction, there to be dealt withal, and detained as sturdy and wandring Rogues, &c. unless such persons shall put in sufficient Sureties for the discharge of the Parish. See *hic antea*.

39 El. 4. All such persons as shall in any wise disturb, or hinder the execution of  
P. Vag. 5. the Law, made 39 El. c. 4. or any part thereof concerning the punishment, §. 15.  
Disturbers  
of this  
Law.  
and conveying of Rogues; or shall make rescous against any Officer or Person authorized for the execution of this Statute, shall forfeit for every such offence 5 *l.* and shall be bound to the Good Behavior; and any two Justices of Peace may bind such offenders to the Good Behavior, and may also

P. Vag. 5. 11.



also by Warrant under their Hands and Seals cause to be levied by Distress and Sale of the offenders Goods, the said sum of 5 *l.* upon the confession of the offenders, or upon the Testimony of two Witnesses, before the said Justices, of such offence.

Within the compass of which Words and Statute, seem to be these offenders and offences which follow :

1. To send Rogues by a general Passport, without conveying them from Parish to Parish, is a let to the conveying of Rogues, according to the Statute; and so a forfeit of 5 *l.* upon them that shall so send them, and they are to be bound to their Good Behavior. Resol. 13.

2. Note, that all Rogues are to be conveyed to their place of Birth, *&c.* by the Constables of every Parish (*sc.* from Constable to Constable, the next straight way.) And therefore, if the Officer (*sc.* the Constable) of any Parish will not receive a Rogue, to convey him to the place where he was born or dwelt; this is a forfeiture of 5 *l.* in such Officer that shall not receive the party, to convey him or her, and he is to be bound, as aforesaid, to his Good Behavior. Resol. 14.

3. So it seemeth, if the Constable, or other person, which shall convey a Rogue towards his place of Birth, *&c.* if he shall not deliver him to the Constable of the next Parish. Resol. 12.

4. If any be sent to a Town whereto he ought to be sent, and is refused being a sturdy or impotent Rogue, the persons so refusing, shall forfeit 5 *l.* and may be bound to the Good Behavior.

Note, that he which is to be sent, is to be delivered or offered to the Church-wardens and Overseers, and if they shall refuse him, they shall forfeit 5 *l.* as aforesaid. Resol. 11.

§. 16.  
The Forfeitures.

Also any two Justices of Peace (by Warrant under their Hands and Seals) may cause to be levied by Distress and Sale of the offenders Goods, all Fines and Forfeitures appointed, or to grow by this Act of 39 *El. 4.* or by the Statute of 1 *Jac. cap. 7.* by conviction of any person, for any offence hereunder mentioned: (but such conviction must be, either by confession of the offender; or by the Testimony of two sufficient Witnesses before the said Justices) as namely,

1. The Minister which shall not keep a Register Book, and therein enter the substance of every Testimonial made for the conveying of Rogues (punished in his Parish) shall forfeit for every default five shillings. P. Vag. 4.

2. The Constable which shall not do his best endeavor, for the apprehending, punishing, and conveying of all Rogues which shall be found in their Parish, shall forfeit for every such default ten shillings. 39 *El. 4.*

3. The Constable which shall not cause to be punished, and to be conveyed (according to the Statute of 39 *El. 4.*) all such Rogues as shall be brought or sent to him by any of his Neighbors, shall forfeit for every such default 20 *s.* 1 *Jac. 7.*  
P. Vag. 5.

Note, that the Constable is to execute the said punishment of whipping of Rogues, either himself, or by some other by his procurement. See to the like purpose in the title *Trespass.*

4. Every person shall apprehend, or cause to be apprehended, such Rogues as he shall see or know to resort to his house to beg, or receive any Alms, and him or them shall carry, or cause to be carried to the next Constable, or else shall forfeit for every such default 10 *s.* 1 *Jac. 7.*  
P. 5.

Master Perkins in his Exposition of the Eighth Commandment, *Thou shalt not steal*, saith, *That he breaks that Commandment, which being lusty, lives by begging.* And so of him that shall relieve, feed, or cloath stout and lusty Rogues and Beggars. Perkins, p. 91. & 749.

5. Every

39 El. 4. 5. Every person that shall willingly bring or convey in any Vessel, out of Ireland, or the Isle of Man, into this Realm, any Rogue, or any such as shall be like to live by begging, &c. shall forfeit for every such person so brought over, 10 s.

39 El. 4. All (or the most part of) which Fines and Forfeitures appointed, or 1 Jac. P. 11. to grow by these Acts (39 El. 4. & 1 Jac. 7.) are to be employed to the maintenance of the Houses of Correction, or relief of the Poor where the offence shall be committed, at the discretion of any two Justices of Peace (as it seemeth) of the same limit.

39 El. 4. Note, that any two Justices of Peace (whereof one to be of the Quo- §. 17. rum) have power to hear and determine all causes that shall grow or come in question, by reason of the Statute made for the punishment of Rogues, Two Justices, Judges, of all matters touching Rogues.

39 El. 4. At Summer Assizes held at *Roxford* for the County of Cambridge, Anno Dom. 1630. Sir Francis Harvey delivered these Rules or Directions, upon the Statutes made against Rogues, viz.

1. That now (after so long time since the making of the Statute of 39 El.) no Pass is to be allowed for these wandering People, and that such of them as do Pass or Travel, though with any Passport, yet are to be punished as Rogues, notwithstanding such their Passport. And herewithal agreed Sir Nicholas Hide at Cambridge Assizes, Anno Dom. 1630. §. 18. Pass.

2. That if any Alehouse-keeper, or other person shall but lodge a Rogue; this is a relieving them, and contrary to the Statute of 1 Jac. and is a Forfeiture of 10 s. Alehouse.

3. That giving of Money by a Constable to a Rogue, is a relieving of a Rogue within this Statute, and a Forfeiture of 10 s. *Hec ille.*

For the way to rid the Countrey of these Rogues, is to give them either due punishment (and that often, yea, at every Town, if they will not be reclaimed) and to keep them from lodging and other relief, as much as may be; or else to send them to the Gaol as Incurable Rogues. (*Vide hic antea.*) For punishment is all the Charity that the Law affordeth them.

Now a great cause of the still continuing of Rogues, is for that in many Out-houses and Barns they be received and lodged by companies, and have their set places of Meeting: To prevent and punish such, it were very fit that persons that suffer their Barns and Out-houses to be so employed, without giving notice to the Constable, should be bound over to the Assizes or Sessions. As for the charges of conveying Rogues, the Constables ought to have their allowance and relief, if need be, at the Sessions. *Resol. 21.*

39 El. 4. Any two Justices of Peace may License diseased persons to travel to Bath or Buxton, for the ease of their griefs, so as they be provided of necessary maintenance for the time of all their Travel, &c. but they may not beg. See hereof more in this title before. P. Vag. 7. Bath.

7 Jac. 4. The Justices of Peace, or the more part of them, within their Divisions, twice in every year, at the least, shall meet for the execution of the Statute 7 Jac. 4. against Rogues and Vagabonds, sturdy Beggars, and other idle and disorderly persons. And some four or five days before their meeting, they shall by their Warrants command the Constables of every Hundred, Town, and Parish, &c. within their several Divisions, to make a general privy search in one night, for the apprehending all Rogues, and wandering, and idle persons, to be brought before them at their said meeting, there to be examined of their idle life, and there to be punished; or otherwise by Warrant of such Justices to be sent to the House of Correction within §. 19. Meeting. Search.

within the said County : Which sending to the House of Correction, shall be by the said Constables who apprehended them (yet at the charge of the Hundred.) But by whom they shall be punished and whipped (*Quere*, It seemeth by the Officers of the Town where the Justices so sit or meet,) and thereupon to be sent to their place of Birth, &c.

§. 20. *Constables.* Also at the same meeting, the Constables of every Hundred and Parish are to appear before the said Justices, and there shall give an account (upon Oath) in writing, and under the hand of the Minister of every Parish, what Rogues they have apprehended, as well in the same search, as also between every such their Meetings, and how many they have punished, or conveyed to the House of Correction. 7 Jac. 4.

Also the said Justices at their said Meetings, may assess reasonable Fines (being not above 40*s.* upon any the Constables) as well for their neglecting to perform this service; *sc.* In not appearing, or giving account, as aforesaid, as also for the neglecting the safe conveying of Rogues, and other idle and disorderly persons sent to the House of Correction by Warrant from the said Justices of Peace. Which conveying of such persons to the House of Correction, must be at the charge of the Hundred, as is aforesaid. 7 Jac. 4.

Also the said Justices at their said Meetings, may deliver such persons as they have formerly sent to the House of Correction from such their Meetings. 7 Jac. 4.

§. 21. 'Every Justice of Peace may reward any persons that apprehend and 'bring before them any Rogues, Vagabonds, or sturdy Beggars, by granting an Order or Warrant under his Hand and Seal to the Constable of the 'Parish, which such Rogue or Vagabond passed thorough unapprehended, 'for payment of two shillings for every Rogue so apprehended; and upon default of payment, to proceed against such defaulter according to the 'Statute of 1 Jac. cap. 7. And to allow out of the said Forfeiture two 'shillings, and allowance for loss of time, as they shall think fit. 14 Chas. 1. Ca. 11.

'And if any person shall apprehend a Rogue, Vagabond, or sturdy 'Beggar, at the confines of any County; which passed thorough another 'County unapprehended, he may go to some Justice of the Peace of the 'County, thorough which such Rogue or Vagabond passed unapprehended, who (upon Certificate under the hand of some Justice of the Peace of 'the County where such Rogue was apprehended) shall grant his Order or 'Warrant under his Hand and Seal to the Constable, to pay to such persons 'two shillings, and what he thinks fit for expences and loss of time, and 'upon refusal of payment, to proceed against such Constable for the Forfeitures by the Statute, 39 Eliz. c. 4.

'And there a Proviso also in the said Statute, empowering the Justices 'of the Peace, in their Sessions, to transport convicted Rogues, Vagabonds, 'and sturdy Beggars, as shall be adjudged to be Incorrigible, to *English* 'Plantations beyond the Seas.

'How Rogues shall be ordered and punished in the House of Correction. See *tit. House of Correction*, and 39 El. 4. and 7 Jac. 4.



## Robbery. CHAP. LXXXIV. v. 48.

27 El. 13.  
P. Hue and  
Cry, 8. 10.  
Co. 7. 7.  
**A**fter a Robbery committed, the Party robbed shall not have his §. 1.  
One Justice.  
Action upon the Statute against the Hundred, except he shall with all speed convenient, give notice of the said Robbery, to some of the Inhabitants dwelling in some Town, Village, or Hamlet, near to the place where such Robbery was committed; and also except he shall commence his Suit or Action within one year next after such Robbery committed; and also except he shall first be examined upon his Oath (within twenty days next before such Action brought) by some one Justice of Peace (of the County where the Robbery was committed) dwelling within, or near to the said Hundred where the Robbery was done, whether he doth know the Parties that committed the said Robbery, or any of them: And if he knoweth any of them, then also (before such Action brought) he shall be bound before the same Justice by Recognisance, to prosecute effectually the said offenders by Indictment, or otherwise, according to the due course of Law. *Vide Plo. 128.* See here.

*In Action sur le Statute de Winchest. ceux points ont esse Resolve in Comuni Banco: Sc.* §. 2.

1. Le party Robbz. doner notice speedily al prochain Village, ou al ascun inhabitant prope al Robbery: & le declaration in tiel cases, est, que le plt. immediate apres le Robbery fait, levie Hue & Crie, & done notice a le ville ou le Robbery fuit fait, & alibi per totum Hundredum al inhabitants, &c. *Plo. 128.*

2. Le party doit commence son suit deins 1 ann. apres le Robbery, & apres le 40 jours puis le Robbery.

3. Le party Robbz. doit esse examine sur son Serement, devant le Justice de P. sil nad conuzance del Robbers &

4. Si mon servant ou Carrier qua carrie mes bienz soit Robb. cesty de que les bienz fuer prises serra examin, & jure devant le Justice de P. & nemy le owner del bienz: & si le servant on Carrier ne veollese examin, l'owner n'ad remedy.

5. Que home poit esse jure in son proper cause, sc. quant argent son servant avoit.

27 El. 13.  
P. Huyand  
Cry 4. 5.  
After a Robbery committed, and notice thereof given, as aforesaid, the whole Hundred must answer the loss, if the Robbers be not taken within forty days. And if the Robbery be done in the Division of two Hundreds; both the Hundreds, and the Franchises within them shall be answerable for the Robbery done, and also for the damages. *Stat. Winch. cap. 2.*

27 El. 13. And yet for that the Party robbed, hath his Recovery and Execution §. 3.  
Tax.  
against some one or few Persons of that Hundred, therefore for Contribution to be yielded from the residue of the said Hundred, upon complaint made by the Parties against whom such Recovery and Execution is had; any two Justices of Peace (the one being of the *Quorum*) being of the same County, and inhabiting in or near the said Hundred where such Execution shall be had, may assess and tax according to their discretions, proportionably, all and every the Towns, Parishes, and Hamlets, as well of the same Hundred (where the said Robbery was committed) as also of the Liberties within the said Hundred, towards an equal contribution to be had for the relief of the Parties charged: The which taxations or sums, the Constables of every Town, shall within their Town, Parish, or Limits, ratably

ratably and proportionably tax and assess upon every Inhabitant and dweller in every such Town, Parish, Village, or Hamlet, for, and towards the payment of such Taxation and Assessment so made by the said Justices upon such a Town, &c. And if any Inhabitant of such Town, &c. shall refuse to pay the said Taxation, so by the Constables taxed, then it shall be lawful for the said Constables, and every of them to distrain for the same, &c. And the same Distress to sell, and the Money thereof coming, the said Constables must deliver over to the same Justices, or to one of them within ten days after Collection. All which, the said Justices shall deliver over (upon request) to the parties charged, to whose use the same was collected.

‘Note, a person coming to inhabit after the Robbery and Judgment *ibid.* given is not chargeable to be taken in execution; and so was the opinion of the Court in one *Deans Case*, *Mich. 10 Car.* in the *Common Bench*.

‘But a person coming after thither to inhabit is assessable, because the Country is chargeable at the time of the Assessment, and not the persons which were there at the time of the Robbery committed. Or as Justice *Barkley* said, and the Court seemed to agree in *Sir Jo. Comptons Case. Pas. 15 Car.* in the *Kings Bench. Quare*, the difference.

Note, That the Inhabitants of any other Hundred (within the same County where the Robbery was committed, or within any other County, with the Franchises within the Precincts of such Hundred) wherein negligence, fault, or defect of pursuit, and fresh Suit after Hue and Cry made, shall happen to be, shall answer and satisfy the one moiety, or half of all and every such sums of Money, and damages, as shall be recovered or had against the Hundred, in which the Robbery was done.

“And the Recovery of such moiety shall be in the name of the Clerk of the Peace, where such Robbery and Recovery is, without naming his Christian or Surname: And such Suit shall not abate by the death or removal of such Clerk of the Peace. *27 El. 13.*

And the like Taxation, Assessment, Levying, and Payment, as aforesaid, shall be had and made for a Contribution within every Hundred, where there was any negligence, fault, or defect of pursuit, and fresh suit after Hue and Cry, *viz.* If upon Suit any Recovery and Execution of any Money, or any Damages shall be had against some one or few Persons of that Hundred where such default was (towards the ease of that Hundred where the Robbery was done) upon complaint made by the Parties so charged, to any two such Justices of Peace, the said Justices may make the like Assessment, &c. toward the relief of the said Parties so charged. *27 El. 13. P. Hue and Cry 6.*

Note, That if any Man be robbed in his house, the Hundred shall not be charged therewith, whether it were done in the day or in the night. *Co. 7. 6.*

§. 4.  
When the  
Hundred is  
not charged.

Also a Robbery done in the night, shall not charge the Hundred; but yet if it be in the day time, or by day light, though it be before the Sun rising, or after the Sun setting, the Hundred shall answer for it. *Ibid.*

If upon pursuit any one of the offenders be apprehended, the Hundred shall not be charged, although the residue of the offenders happen to escape; but pursuit without apprehending some one of the Robbers is no excuse. *27 El. 13. P. Hue and Cry 7. Co. 7. 7.*

If the Party that was robbed, shall himself take any of the Thieves after Hue and Cry made, this shall excuse the Hundred. *Cro. 179.*

Although

Although that one of the Thieves be taken, yet if Hue and Cry be not duly made, the Town where the default is, shall be amerced: But the Party robbed shall have no remedy for his Money (of the Hundred) in regard that one of the Thieves is taken. And this is by force of the Statute 27 *El.* whereas the Amerciament is by force of the Statute of *Winchester*.

Dyer 370.  
Pl. 9.  
P.R. 155.

It seemeth by my Lord Dyer, *An. 22 Eliz.* that the Statute is satisfied, if the names of the offenders be descried; so that they may be indited and outlawed. *Quere inde*, for the words of the Statute of 13 *Edw. 1.* and 28 *Edw. 3.* are, That the Countrey must answer for the Bodies of such offenders. *Winch. 13 Edw. 1. cap. 2.* And Stat. 28 *El. 3. cap. 11.*

*Nota*, The Party robbed must bring and commence his Action within twenty days, next after his examination taken before the Justice of Peace. 36 *El. Dews Case*.

Also the Justice of Peace must be abiding within the County, at the time of examination taken by him, as it seemeth; for the Justice of Peace being out of the County, is but a private man; and hath no authority to take such examination. See the title, *Justices of Peace, hic c. 6.*

If a Man be robbed in *Middlesex*, and maketh Hue and Cry freshly into *Essex*, if the Towns adjoyning do not according to the Statute of *Winchester*, the Party robbed may have his Action of Debt, in the one County, or the other, by *Fincham, 15 Edw. 4. 18. Br. Deit. 104.*

High-ways leading from one Market Town to another, shall be enlarged, so that there be neither Dike, Underwood, nor Bulsh, whereby a Man may lurk to do hurt, within Two hundred foot of the one side, and of the other; and if by default of the Lord that will not amend the ways as aforesaid, any Robberies be done therein, the Lord shall be answerable for the Robbery: And if a Park be near the High-way, the Lord must set his Park Two hundred foot of each side from the way as aforesaid; or else must make such a Wall, Dike, Hedge, or Pale, that such offenders may not pass to and fro there. *Winch. 13 Edw. 1. cap. 5.*

§. 5.  
*Highways.*

Every Justice of Peace may cause such High-ways to be enlarged and cleansed as aforesaid. See *hic antea, tit. High-ways.*

Sacramenti. CHAP. LXXXV. V. 49.

1 Ed. 6. 1  
P. Just. 8

IT seemeth, that three Justices of the Peace (one of them being of the *Quorum*) may out of the General Sessions, take Information and Accusation (by the Oaths of two honest persons) against such as shall deprave, or unreverently speak of the Sacrament of the Body and Blood of our Lord and Saviour Jesus Christ, against the Statute, &c. And may bind the Accusers (and such other Witnesses as were by) Recognizance (in five pounds apiece) to give in evidence at the tryal. But Mr. Lamb. maketh a *quære* hereof. "The Statute of 1 *E. 6. c. 1.* is repealed by 1 *Ma. 1.* But is revived "by 1 *El. 1.* in such manner as the same was, 1 *E. 6.*

§. 1.  
*Three Justices.*

Lamb. 352.

1 E. 6. 1.

"And such person being indicted at the Sessions, and found guilty of "depraving, despising, or contemning the Blessed Sacrament, by words or "otherwise, he shall suffer imprisonment, and make Fine and Ransom at "the Kings pleasure.

§. 2.  
*Penalty.*

1 E. 6. 1.

"The Justices of Peace in Sessions, may hear and determine offences "and contempt against that Act, so as the parties offending be informed of, "or presented within three moneths after the offence committed.

§. 3.  
*Power.*



- §. 4. *Process.* "The Justices of Peace may make Process by two, *Capias* and *Capias* 1 E. 6. 1.  
" *Utilegatum*, into that or any other County, and three of them may bail  
" the offender in order to his tryal.
- §. 5. *Writ to the Bishop.* "The Justices of Peace in Sessions may award a Writ to this effect, 1 E. 6. 1.  
" *Rex, &c. Episcopo L. salutem præcipimus tibi quod tu, Cancellarius tuus*  
" *vel alius deputatus tuus* sufficienter eruditus sis cum Justic. nostris ad  
" *pacem in Com. nostro B. conservand. assign. apud D. tali die ad Sessio-*  
" *nem nostram adtunc & ibidem tenendam ad dandum consilium & advi-*  
" *samentum eisdem Justic. nostris ad pacem super arraignmentum & deli-*  
" *berationem offendenti. contra formam Statuti concernent. sacrosanct. Sacra-*  
" *mentum Altaris.* Which Writ must be directed to the Bishop of the  
" *Diocesis.*
- §. 6. "The Party indicted may purge and try his innocency by Witnesses. 1 E. 6. 1.  
" Of the Uniformity of Common Prayer and Sacraments. See the Sta- 14 Car. 2.  
" tute 14 Car. 2. cap. 4. at large, and 15 Car. 2. cap. 4. cap. 4.  
" And the Act of 16 Car. 2. cap. 4. of *Conventicles.* See *Conventicles.*  
" See for the Process against such as deprave the Sacrament. *Hic tit.*  
" *Process.*

Sabbath-day or Sunday. CHAP. LXXXVI V. 49.

- §. 1. *Penalty.* **N**O Carrier with an Horse, nor Waggoner, Carter, nor Wainman, with  
any Waggon, Cart, or Wain, nor any Drover, with any Cattle, shall  
by themselves, or any other travel upon the Sunday, upon pain that every  
person so offending, shall forfeit Twenty shillings for every such offence,  
3 Car. c. 1.
- §. 2. "This Statute gives the forfeiture but of one Twenty shillings for  
" breach of one Sabbath-day, although the driving on that day be through  
" many several Parishes, and where the Action is first attached, or Distress  
" first taken, that Parish shall have the benefit of this Forfeiture, *Resol. 16.*
- §. 3. *Butcher.* If any Butcher, "by himself, or any other for him, by his privity or  
" consent" shall kill, or sell any victual upon the Sunday, he shall forfeit  
for every such offence, 6 s. 8 d. *ibid.*
- §. 4. *Punishment.* Any one Justice of Peace (Major, or Head-officer of any City or 3 Car. 1.  
Town Corporate) within their Limits, upon their own view of any of the C. 1.  
said offences, or upon proof thereof upon oath, by two or more witnesses,  
or upon the confession of the party offending, may make their Warrant to  
any Constable or Church-warden (within their several Limits, where such  
offence shall be done) to levy the same Forfeitures by Distress and Sale of  
the offenders Goods, rendring to the party the overplus: "Or may be  
" sued for in any Court of Record, in any City, or in the Sessions.  
Every Justice, and Head-officer aforesaid, have power to minister an  
Oath to such Witnesses, *ibid.*
- §. 5. *Forfeitures.* All the said Forfeitures shall be employed to, and for the use of the  
Poor of the Parish where the offence shall be committed, *ibid.*
- And yet any such Justice, or other Head-Officer, out of the said For- 3 Car. 4.  
feitures, may reward any person or persons that shall inform, or otherwise  
prosecute any such offender according to their discretions, so that such re-  
ward exceed not the third part of the Forfeiture, *ibid.*
- Provided, that no person shall be impeached by this Act, unless he be  
questioned thereof within six moneths after the offence committed, 3 Car.  
cap. 1.

There

There shall be no unlawful Exercises, &c. used upon the Sabbath day.

*Vid. tit. Games.*

Against Fairs, and buying and selling upon the Sabbath day. *Hic tit.*

*Market.*

"Any Shoemaker that shall shew, with an intent to sell, any Shooes, §. 6.  
"Boots, Buskins, Stirrups, Slippers, or Pantofles, upon the Sunday, shall *Shoo-*  
"forfeit the Goods shewed, and 3 s. 4 d. for every pair so shewed. *makers.*  
"1 Jac. 22.

*Schoolmaster.* CHAP. LXXXVII.

- 23 El. 1. "IF any keep a School-master, which shall not repair to Church, or be §. 1.  
"allowed by the Ordinary, shall forfeit for every moneth 10 l. *Licence.*  
"But the Ordinary shall take nothing for such allowance, and the School-  
"master so teaching, shall be disabled to be a Teacher of Youth, and shall  
"suffer imprisonment for one year, without Bail. It seems by this Act, be-  
"ing in the dis junctive, That although he doth not come to Church, yet  
1 Jac. "if he be allowed by the Ordinary, it shall excuse the penalty. See also  
"2 Jac. 4. none shall use or teach a School out of the Universities and Col-  
"ledges, except a Grammar School, or in some Gentlemans House, or  
"be Licensed by the Ordinary, upon pain that the Schoolmaster, and  
"he that retaineth him, shall forfeit 40 s. a day, to be Recovered by  
"Action.  
"If any School-master, or other person instructing Youth, in any §. 2.  
11 Car. 1. "private house or family, as a Tutor or School-master, shall instruct or  
c. 14. "teach Youth as a Tutor or School master, without License from the  
"Archbishop, Bishop, or Ordinary, for which he shall pay Twelve pence,  
"and no more. And before subscription made, as that Act prescribes, for  
"the first offence shall be imprisoned three moneths, without Bail: And  
"for the second, and every other offence, shall suffer imprisonment for  
"three moneths without Bail, and pay the King 5 l.

*Sewers.* CHAP. LXXXVIII. V. 50.

- 39 El. 9. "SEwer signifieth such Passages, Gutters, or Drains, as carry the Water §. 1.  
p. 16. "into or towards the River or Sea, and the Office of the Commission-  
"ers of Sewers, is principally to see such Passages, Gutters, Drains, and  
"Ditches well scoured, kept and maintained in the Marish and Fen  
"Countreys, for the better conveyance away of the Water into the  
"Sea.  
13 El. 9. Six Justices of Peace in the Shire where any Laws and Ordinances of §. 2.  
Sewers, are to be executed, (two being of the *Quorum*) within their Limits, *Six Justices.*  
may execute the said Laws and Ordinances of the Commissioners of Sew-  
ers, for one year after the expiration of any such Commission, except a new  
Commission be published in the mean time.  
Co. 5. 100. Note, That the proceedings of the Commissioners of Sewers, ought  
& 10. 138. to be limited and bounded with the Rules of Law and Reason, and accord-  
140. ing to the ancient Statutes and Ordinances.  
Co. 10. Now these ancient Statutes concerning Sewers, are many, and are of §. 3.  
143. three sorts. *Statutes.*  
The first sort consist in defending and repairing of the Walls, Banks,  
and Sewers, &c. Of this sort are the Statutes made, 9 H. 3. c. 15 & 16.  
V 2 6 H. 6.

6 H. 6. c. 5. 18 H. 6. c. 10. 23 H. 6. c. 9. 12 E. 4. c. 6. 4 H. 7. c. 1. & 6 H. 8. cap. 10.

The second sort consist in pulling down, and removing Nufances, &c. As by the Statutes made, 9 H. 3. c. 23. 25 E. 3. 4. 45 E. 3. 2. 1 H. 4. 12. 9 H. 6. c. 9. & 12 E. 4. c. 7.

The third consisteth of both sorts, *sc.* as well in repairing the Banks, &c. As in pulling down Nufances, &c. And of this sort are these Statutes following, *viz.* 23 H. 8. c. 5. 25 H. 8. c. 10. 3 E. 6. c. 8. 13 El. c. 9.

The inconveniences which insue by these Nufances, and especially by the new levying, or inhancing of Wears, Mills, Stanks, Fish-garths, Locks, Stakes, Kidles, and Flood-gates, are these, *sc.* The common passage of Ships and Boats in the great Rivers; as also Meadows, Pastures, and Arable Grounds adjoyning to the Rivers, be greatly disturbed, drowned, walted, and destroyed, many people perished, and the young fry of Fish destroyed. See 1 H. 4. c. 12. 4 H. 4. c. 11. & 12 E. 4. c. 7. See *tit. Wears*.

The Form of the Commission of Sewers; the Authority of the Commissioners, as also the Form of their Oath, you may see at large in the Statute 23 H. 8. c. 5. & P. 2. 4.

§. 4. "Every Commissioner shall before he execute that Office, before "persons authorized by *ded' potestat'* or before the Justices of Peace, in "their Quarter Sessions take this Oath.

"**Y**ou shall swear, That you to your cunning, wit, and power, shall truly "and indifferently execute the Authority to you given by this Commis- "sion of Sewers, without any favor, affection, corruption, dread, or malice to "be born to any manner of person or persons. And as the case shall require, you "shall consent and endeavor your self, for your part to the best of your know- "ledge and power, to the making of such wholesome, just, equal, and indifferent "Laws and Ordinances, as shall be made and devised by the most discreet and "indifferent number of your Fellows, being in Commission with you, for the due "Redress, Reformation, and Amendment, of all and every such things, as "are contained and specified in the said Commission. And the same Laws and "and Ordinances to your cunning, wit, and power, cause to be put in due exe- "cution, without favor, meed, dread, malice, or affection. As God you help, "and all Saints. 23 H. 8. 5.

"And shall also, as it seemeth receive the Sacrament, and take the "Oaths prescribed by 1 El. 1. & 3 Jac. 4. And make the Declaration pre- "scribed by 25 Car. 2. which you shall find *hic* c. 4.

§. 5. *Power.* Note, That the King by the Common Law, may award his Commis- sion of Sewers, for the amending of the Sea-banks, and for the repairing, amending, and scouring of other Banks, Sewers, Gutters, Ditches, Pits, and Trenches, so as the Fresh-waters may have their direct course, *F. N. B.* 113 a. And see there the Form of that Commission, and the proceedings thereupon.

These Commissioners cannot make any new great River, neither can they make new inventions (as artificial Mills to cast out the Waters, or such like) but such new Rivers, and new inventions (if they be for the publick good) ought to be made by Parliament: And yet the making new of an ancient Bank or a Sewer in a place more fit, and with some little alteration and distance, and upon necessity, seemeth to be warrantable. *Co.* 10.

These Commissioners cannot cast down any Mills, Causeys, or Stanks, &c. erected before the time of Edward the First, but only may cause them to be abated, if they be raised above their ancient heights, *Co.* 10. 138.

These



These Commissioners ought to tax none towards these reparations, *&c.* But such as have prejudice or loss by the Nuisances or Defaults, and which have benefit by the amending or removing of them. *Co.* 10. 142. See the Statute and Form of the Commission. 6 *H.6.* c.5.

*Co.* 5. 100. Also these Commissioners ought to tax all that be in danger to be indamaged by the not repairing, *&c.* (and that according to their Land, *&c.*) And not tax him only whose grounds lie next adjoyning to the River, *&c.* For, *Qui sentit commodum, sentire debet & onus.*

*Co.* 5. 100. Note, that in all cases of taxing or rating by these Commissioners, it ought to be proportionable, and according to the quality, and yearly value of the Lands, Tenements, Rents, Commons, and Fishings of the Persons chargeable, and not according to the quantity or content thereof.

And the yearly value shall be accounted as the Lands, *&c.* are of their own nature, without respect to the bettering or impairing thereof by the good or bad Husbandry of the owners or occupiers thereof (as it seemeth.) See *Co. L.* 171 & 179. to such purpose.

*Co.* 5. 108. Again, if the owner of any Land be bound by prescription, or otherwise to repair the Bank of a River, Wall, or Sewer, *&c.* he ought to do it; yet if he be not able to repair it; or that there be other inevitable necessity, or that there was no default in the party, but that the Banks, or Wall, *&c.* are broken or overflown by tempest or unusual overflowing of waters, or the like, (which be the acts and handy work of God, and which no providence or industry of him that is bound to the reparations, could prevent.) In these cases the Commissioners ought not to charge him, only, with the whole, but may, and in good discretion ought, to charge and tax all such as have any Lands (or other profits) there, in danger, or subject to loss, according to their Lands, *&c.*

But when one is bound by prescription, or otherwise, to repair a Bank, or Wall, *&c.* if there be any default in him, and the danger not inevitable, but that he alone may well repair it, the Commissioners may there charge him only to repair this: And if by his default the danger become inevitable, or that by his default he alone is not able to repair it, whereby others are charged as aforesaid, every of them may have the Action of the Case against him, *&c.* and shall recover their damages according to their loss.

*Co.* 10. 130. Also, where a Man hath any Lands lying between the Sea, the River of *Thames*, or any other River, and his Neighbors Grounds, and is bound by Prescription, or otherwise, to make, or keep certain Banks, or to scour certain Ditchers or Sewers, between his said Neighbor and the said River or Sea, and doth not make, keep, amend, and scour the same, as he ought to do, by reason whereof his Neighbors Grounds are drowned, the party so indamaged shall have his Action of the Case against the other so making default, *&c.* See *F. N. B.* 93. g. & 7 *H.4.* 8. & 41.

*Co.* 10. 139. & 143. Also, these Taxations ought to be particular, *sc.* upon every several owner; or occupier of Lands, Tenements, Rents, Commons, and Fishings, *&c.* And not to be a general sum in gross upon a whole Town. See more hereafter, *tit. Stock of the Shire.*

See Master Sergeant *Callis* reading upon the Statute of 23 *H.8.* of Sewers.

## Sheep. CHAP. LXXXIX.

§. 1.  
Transport-  
ing.

"IF any shall bring, deliver, send, receive, or take, or procure, &c. in  
"to any Ship or Bottom, any Rams, Sheep, or Lambs, or any manner  
"of Sheep being alive, to be carried and conveyed out of England,  
"Wales, or Ireland, or any the Queens Dominions; the Party, his Aiders,  
"Abettors, Procurers, and Comforters, shall forfeit all his Goods, a moiety  
"to the Queen, the other moiety to the Prosecutor in any Court of Re-  
"cord, and shall suffer imprisonment for a year without Bail; and at the  
"years end, in some Market Town, in the fulness of the Market, on  
"the Market day, have his left hand to be cut of, and nailed up in the  
"openest place of such Market; and the second offence is Felony.

§. 2.

"Justices of Peace (*inter alios*) have power to inquire of, hear and  
"determine offences against this Act. 8 El. 3.

§. 3.  
Keeping.

"No Farmer shall keep above Two thousand Sheep at one time, up-  
"on pain to forfeit for every Sheep above, 3 s. 4 d.

"It shall not extend to Lambs under a year old, nor to Sheep coming  
"by Executorship or Marriage; so as within a year, he reduce them to  
"Two thousand, nor to Sheep bequeathed by Will, nor to Sheep kept in  
"a Mans own Demesnes.

"The Prosecution shall be within a year, and Justices of Peace, as  
"well by Oaths of Twelve Men, as by Information of the Kings Subjects.  
"And such Process shall be made, as in Trespafs, and the Fines shall not be  
"less then the Forfeitures. 25 H.8. 13.

"Sixscore Sheep shall be accounted a Hundred. *Ibid.*

## Sheriffs. CHAP. XC. V. 51.

§. 1.  
One Justice  
to Oversee  
the County  
Courts.

THE *Custos Rotulor*, or the eldest Justice of the *Quorum* (in his ab-  
sence) ought at the General Sessions after *Michaelmas*, to appoint  
two Justices of the Peace (the one being of the *Quorum*) to have the  
over-sight and controlment of the Sheriff, Under-Sheriff, and other their  
Officers and Deputies, and the Inspection and Examination of their Books  
and Amerciaments, and for making of Estreats, &c. in their County  
Courts.

Courts.

Also either of those two Justices of Peace, or any other Justice of  
Peace; ('as it seemeth by the words of the Statute') upon complaint of  
the party grieved, may examine the Sheriff, [Under-Sheriff, Shire-Clerk,  
and Plaintiffs, concerning the taking, or entring of Plaints in their said  
County Courts, and Books against the Statute, *viz.*

1. If any Plaints shall be entred in their Books, in any Mans name,  
unless the Party Plaintiff be either present in Court in Person, or by a  
sufficient Attorney or Deputy, that is known to be of good name and be-  
havior.

2. If that the Plaintiff find not Pledges to pursue his said Plaint (*sc.*  
such Persons as are known in that County.)

3. If the Plaintiff shall enter more then one Plaint, for one Trespass,  
Contract, or Cause.

4. If the Sheriff, Under-Sheriff, &c. shall enter or cause to be entred  
any more Plaints then the Plaintiff supposeth he hath cause of Action for  
against the Defendant.

And

11 H. 7. 15. And if the said Justices, or Justice of Peace, upon his or their examination, shall find any such default in the said Sheriff, Under-Sheriff, or Clerk, that shall stand for a sufficient Conviction, without any further inquiry, or examination; and they shall forfeit upon the same examination, forty shillings to the King for every default; the same to be recovered in the *Exchequer*.

And the same Justice or Justices that so shall take the examination, shall certify the said examination into the *Exchequer* within a quarter of a year, upon pain of 40 s.

11 H. 7. 15. Also the said Justice of Peace may examine the defaults of the Bailiff <sup>Bailiffs</sup> of the Hundred, for not warning of the Defendants (in such Plaints) to appear, according to his Precepts received from the Sheriff or Under-Sheriff. And if upon examination, the Justice shall find any default in such Bailiff, in not warning the Defendant to appear, or otherwise in not executing his said Office, that shall stand for a sufficient conviction, and the said Bailiff thereupon shall forfeit to the King for every such default 40 s. the same Examinations to be certified into the *Exchequer* as aforesaid.

11 H. 7. 15. Sheriffs, &c. shall make no *Estreats* to levy their Shire *Amerciaments*, <sup>Estreats</sup> until the said Justices (appointed at the General Sessions as aforesaid) have had the view and oversight of their Books: And their *Estreats* shall be made by Indentures (or shall be indented) between the said Justices, and the Sheriff, and Under-Sheriff, and sealed with their Seals, and the one part to remain with the said Justices, and the other part with the Sheriff, for to be his Warrant to levy the *Amerciaments* by.

The Bailiffs, &c. Collectors of the said *Amerciaments* shall be sworn by the said Justices, that they shall not take more Money than is forfeited and contained in their said *Estreats*, sealed by the Justices as aforesaid.

<sup>Ibid.</sup> Also the said Justices of Peace, or one of them, may examine the default of the said Collectors, Bailiffs, and other gatherers of the Sheriffs *Amerciaments*, whether they have taken or gathered any more Money than is forfeited and contained in their *Estreats* (sealed with the Seals of two Justices of Peace as aforesaid:) And if upon examination the Justices or Justice shall find any such default, That also without further inquiry, shall stand for a sufficient conviction. And the said Collectors, Bailiffs, or other Gatherers of such *Amerciaments*, thereupon shall forfeit to the King for every default 40 s. The said Examination also (whether it be by one or two Justices) is to be certified into the *Exchequer* as aforesaid.

11 H. 7. 15. Also the said Justices of Peace upon suggestion or information of <sup>Two Justices</sup> the party grieved, shall make like Process, as in an Action of Trespass <sup>Process</sup> against the said Sheriff, Under-Sheriff, or other their Officers (offending in any the particulars aforesaid) for to appear before them to answer the said Suggestion or Information. See what the Process is in the title *Process*.

27 El. 7. "1. No Sheriff, Coroner, or other Officer, who may make return §. 2. "of Writs, shall return any Juror dwelling out of any Liberty, without <sup>Jurors</sup> "the true Addition of his dwelling at the time of his return, or within a "year before, or some other sufficient Addition, by which he may be "known; nor within any Liberty, without such Addition, as shall be certified to him by the Bailiff of the Liberty, or his Deputy, under his "hand.

"2. No



- “ 2. No Bailiff of Liberty, or his Deputy, shall return any Juror, or  
 “ deliver the name of a Juror to the Sheriff, his Under-Sheriff, or Deputy,  
 “ without such Addition, &c.
- Extreas.* “ 3. No Extract of Issues against a Juror, returned as aforesaid, shall  
 “ be delivered out, renewed, or put in ure, without the Addition put in  
 “ the original Pannel or Tales.
- “ 4. No Under-Sheriff, Bailiff, &c. shall collect any Issues so extract-  
 “ ed of any other, then of such person as by the Extract is right charged,  
 “ or chargeable with the payment thereof.
- Penalty.* “ Upon pain that the Clerk writing, &c. And every person offending  
 “ against that Act, shall forfeit to the Queen five marks, and to the party  
 “ suffering loss, five marks.
- “ Justices of Peace may inquire, hear, and determine thereof, as well <sup>27 El. 7.</sup>  
 “ within Liberties as without, and make Execution for the Forfeitures.
- §. 3. “ No Sheriff, &c. shall return Juror, that cannot dispend 4 l. upon a <sup>27 El. 6.</sup>  
*Jurors.* “ venue upon pain to forfeit 20 s.
- Issues.* “ Upon the first *Distingas* or *Habeas corpora*, the Sheriff, &c. shall re-  
 “ turn for Issues upon every Juror, 10 s. upon the second 20 s. upon the  
 “ third 30 s. And upon every further Writ, to double the Issues, or for-  
 “ feit 5 l.
- False Sum-  
mons.* “ If any be returned Summoned, where he is not Summoned, and loose  
 “ Issues for not appearing, the Sheriff, &c. in whose default it is, &c. shall  
 “ forfeit double his Issues.
- Reward for  
Sparing.* “ If a Sheriff, &c. shall take, or have by himself, or any other any re- <sup>27 El. 6.</sup>  
 “ ward or profit for sparing, not warning, or not returning a Juror to try  
 “ any Issue before any Justices; the party offending shall forfeit 5 l. a moie-  
 “ ty to the Queen, the other moiety to the Prosecutor in any Court of Re-  
 “ cord, by Action, &c. or Information.
- §. 4. “ No Sheriff, for the year that he is Sheriff, shall exercise the Office of <sup>1 Mar.</sup>  
 “ a Justice of Peace for that County; but all Acts done that year by him,  
 “ by vertue of the Commission of the Peace, shall be void.
- “ The Reason seems to be, for that the same person cannot well exer-  
 “ cise two Offices, especially these. For as a Justice of Peace, he is a Judge  
 “ of Record, and hath power in many Cases to command the Sheriff, so  
 “ cannot command himself. But this Statute requires only the forbear-  
 “ ance of the Execution of his Office for that year; and he may continue  
 “ in the Commission of the Peace.
- §. 5. “ Sheriffs, &c. shall take no more for the Execution of any Extent, or  
*Fees for  
Execution.* “ Execution upon Body, Goods, or Lands, then Twelve pence in the  
 “ pound for the first Hundred pound, and Six pence for every Twenty  
 “ shillings more; if he do, he shall loose to the party his treble damages:  
 “ And for every time he shall offend, 40 l. a moiety to the King, the other  
 “ moiety to the Prosecutor, by Plaint, Action, Bill, Suit, or Information,  
 “ &c. <sup>27 El. 4.</sup>
- “ By the general words of which Act, it seemeth, That an Informa-  
 “ tion or Bill lieth before the Justices of Peace in Sessions.
- “ Also if the Debt be 160 l. there shall 100 s. Fee paid for the 100 l.  
 “ and 30 s. for the 60 l. residue. *Latch. p. 19. 51.*
- “ And the Proviso of the Statute, That it shall not extend to Fees for  
 “ any Execution in a Corporation, shall be intended of Actions arising  
 “ within the Corporation: And for which, the Action is brought in the  
 “ Corporation Court, and Judgment there had, and not where the Sheriff  
 “ upon any Process out of a Superior Court enters a Corporation, and  
 “ doth Execution. *Latch. p. 19. 51.*

Every

27 El. 12. "Every Under-Sheriff, Bailiff of Franchise, Deputy and Clerk of §. 6.  
 "every Sheriff and Under-Sheriff, and other persons that take on them, Oath of  
 "to impanel or return any Inquest, Jury, or Tales; or intermeddle with Sheriff and  
 "Execution of Process in any Court of Record, shall before they meddle Bailiffs.  
 "with the Execution of such Office, or Execution of Process, take the  
 "Oath of Supremacy, 1 El. 1. And this Oath *Mutatis mutandis*.

27 El. 12. "I A. B. shall not use or exercise the Office of Under-Sheriff corruptly,  
 "during the time that I shall remain therein; neither shall, or will ac-  
 "cept, receive, or take, by any colour, means, or device whatsoever; or consent  
 "to the taking of any manner of Fee or Reward, of any Person or Persons, for  
 "the Impannelling or Returning of any Inquest, Jury, or Tales, in any Court  
 "of Record for the Queen; or betwixt Party and Party above Two shillings,  
 "or the value thereof; or such Fees as are allowed and appointed for the same,  
 "by the Laws and Statutes of this Realm; but will according to my power,  
 "truly and indifferently with convenient speed, Impanel all Jurors, and re-  
 "turn all such Writ or Writs, touching the same as shall appertain to be done  
 "by my Duty or Office, during the time, I shall remain in the said Office. So  
 "help me God.

27 El. 1: "And if any person shall intermeddle, &c. not having taken the said Forfeiture.  
 "Oath, he shall forfeit 40 l. A moiety to the King, and the other moiety  
 "to the Prosecutor.

"And the Justices of Peace, in their Sessions, have power to hear and  
 "determine the defaults against that Act, as well by Presentment and In-  
 "formation as Indictment; and upon Conviction, to Award Execution for  
 "the Forfeitures, by *Fieri facias*, *Attachment*, *Capias* or *Exigit*, and the  
 "*Custos*, &c.

27 El. 12. The *Custos Rotulorum*, or any two Justices of the Peace, the one being  
 P. 32, 33. of the *Quorum* (*Ex Officio*, and without any Commission to that purpose  
 to them to be directed) may take the Oaths of the Under-Sheriff of their  
 County, his Bailiffs, Deputies, Clerks, and other Officers, before they shall  
 exercise their said Offices,

§. The Oath of Supremacy.

§. The Oath for the true exercising their Office.

But special Bailiffs made for the serving of Process, are not to be sworn  
 by this Statute, as Mr. *Crompton* reporteth, and saith, *That it was so ad-*  
*judged in the Kings-Bench.* And yet the words of the Statute be, *That every*  
*person which shall have authority, or take upon him to intermeddle with*  
*Execution of Process, &c. shall receive and take the said Oaths, Crompt. 76.*  
 & 103. "And so it was resolved *M. 7 Car. 1. Jones Rep. 249.* And the  
 "same matter was also in question lately in the *Kings Bench*, but not resol-  
 "ved that I remember.

"Sheriffs, Under-Bailiffs, their Bailiffs or Ministers shall not make out §. 7.  
 "any Process on any Indictments, or Presentments in their Leets or Turns,  
 "but shall deliver the same to the Justices of Peace at their next Sessions;  
 "or in default thereof, shall forfeit 40 l. &c. And the Justices of Peace  
 "may proceed thereon, as if such Indictment or Presentment were taken  
 "before them, and may arraign and deliver the Parties indicted; and such  
 "as be indicted of *Trespass*, shall make such Fine as they in their discre-  
 "tions shall think fit; and the *Estreats* shall be inrolled and delivered by  
 "Indenture. And if the Sheriff, &c. shall arrest, &c. any person; or levy  
 "such *Amerciament* without such authority, he shall forfeit One hundred  
 "pound. 7 E. 4. 2.

*Ships.*

## ships. CHAP. XCI.

“SEveral of the Penalties given by the Statute of 12 Car. 2. 18. for  
 “offences against that Statute are, and may be recovered by Inform-  
 “ation in any Court of Record. And it seems the Sessions being so, they  
 “may there be recovered: For which see that Statute at large.

## silktbrowing. CHAP. XCII.

§. 1. *Apprentice.* “NO Person shall use, exercise, continue, or set up the Trade  
 “of a Silktrower, unless he is or shall be Apprentice to that  
 “Trade, or have served seven years Apprenticeship thereunto, upon  
 “pain to forfeit Forty shillings for every moneth; one moiety to  
 “the King, the other moiety to the Prosecutor by Action of Debt,  
 “Bill, Plaint, or Information; or by other lawful means (*inter*  
 “*alios*) before the Justices of the Peace at their Quarter Sessions.  
 “14 Car. 15.

§. 2. *Imbezling Silk.* “If any Silk-winder and doubler, imbezzle, pawn, or detain any Silk  
 “delivered to them to wind or double, every Winder or Journey-man so  
 “offending, and the Buyers and Receivers thereof, being convicted by  
 “Confession, or the Oath of one Witness before any Justice of Peace of  
 “the County, or Liberty; or if within a Town-corporate, before the chief  
 “Office of the same, who may hear, and determine, and give the party  
 “damnified, such satisfaction for their loss, damage, and charges, as they  
 “shall order, so as no more be awarded then the party is damnified, and  
 “hath expended in looking after it. And if the party be not able, or do  
 “not make recompence in fourteen days after Conviction, he shall for the  
 “first offence be apprehended, and whipped, or set in the Stocks in the  
 “place where the offence was committed, or some Market Town of that  
 “County, near thereunto; and for the second offence, shall be punished  
 “as before. *Ibid.*

“The Receivers and Buyers of Silk shall be subject to the like punish-  
 “ment, as the person imbezzeling. *Ibid.*

§. 3. *Employment* “Any Freeman of the Company of Silk-throwers may set on work  
 “any Native Subjects of His Majesty, whether Men, Women, or Chil-  
 “dren, to turn the Mill, tie Threds, double Silk, and wind Silk, as former-  
 “ly, although they have not served as Apprentices to that Trade by se-  
 “ven years. 14 Car. 2. c. 15.

## skinners. CHAP. XCIII.

“NO Persons using the Trade of Merchandise, or any other Trade,  
 “shall dress, or cause, &c. in their Houses, or by any Workmen  
 “not using the Trade of a Skinner any Black Coney-skins, nor transport  
 “or cause, &c. Nor Pack, Ship, or Lade, to that intent, any Black Coney-  
 “skins of the breed of *England*, unless the same be tawed and perfectly  
 “wrought, dressed, and packed by Skinners, or Tawers, under them, ac-  
 “cording to the Science of Artizan Skinners, upon pain to forfeit the same,  
 “or the full value thereof. 3 Jac. 9.



"No Merchant shall buy, bargain, or contract for, or cause, &c. any Coney-skins, or Lamb-skins, called *Morkins*, of the breed of England, or being here under 1000 Black Coney-skins, or 3000 Gray Coney-skins, or 2000 Lamb-skins, called *Morkins*, at one time, and not by parcels, except of Artizan Skinners; nor shall sell the same again to any persons in this Realm, in small parcels, viz. Under these numbers of each, unless to an Artizan Skinner, upon pain to forfeit the same, or the full value.

"No person shall retain or keep any Servant, Journey-man, or Apprentice, to work therein, except the person using that Trade hath served seven years therein, and do use the Trade of a Skinner, upon pain to forfeit double the value of the Skins, or Wares wrought. 3 Jac. 9.

"A moiety of the Forfeitures to the King, the other moiety to the seiser; or that shall sue for the same by Action of Debt, Bill, Plaint, or Information in any Court of Record. 3 Jac. 9.

**Soldiers. CHAP. XCIV. V. 32.**

**E**very Justice of Peace of the County, where any Soldier, which hath served the King in His Wars, shall be found, which hath sold, given, purloyned, or put away, &c. any Horse or Harness (wherewith he was set forth, or which was after appointed to him by the Lieutenant or Captain, &c.) upon complaint and due proof of the offence to be made (by the owner, his Executors, or Administrators) to any such Justice, shall by the said Justice be committed to Ward, there to remain without Bail, until he hath satisfied the Party grieved, his Executors, or Administrators; for such Horse or Harness, &c. unless he do bring with him, before the same Justice, sufficient testimony from his Captain, &c. in writing under his Seal, testifying, That the said Horse or Harness, &c. was lost in the Kings service against the will of that Soldier; or was taken by his Captain, &c. from him, and appointed to some other to serve withal (except the same Soldier were imprisoned for the same offence before, by his Lieutenant or Captain, &c. and made restitution.)

The next Justice of Peace to the place of landing of any Poor Soldier, Mariner, or Seafaring Man suffering Shipwrack, may make them a License to pass to the place where they are to repair, &c. See hereof in the title *Rogues*.

"Every Parish shall be charged to pay weekly a sum of Money towards the relief of sick, hurt, and maimed Soldiers, that shall loose their Limbs, or disable their Bodies, having been prest, and in pay for the Queens service, as by the major part of the Justices of Peace, in their next Quarter Sessions after *Easter*, shall be appointed, so as no Parish be rated above ten pence, or under the sum of two pence weekly; and so, as in any County where there are above fifty Parishes, the total sum exceed not six pence for every Parish by the week.

"The Major, Aldermen, and Recorder of London, may on every Parish there, set, and tax such reasonable sums for the said relief, as they shall think fit and convenient; so as the same exceed not weekly three shillings out of any Parish: And so, as in the total, the same exceed not three shillings weekly, nor be under twelve pence weekly out of every Parish one with another.

"Which sums shall be affect by the Parishioners amongst themselves, if

"if they can agree, or in default thereof, by the Church-wardens, and Petty Constable of the Parish, or the more part of them. And in default of the Parishioners, Church-wardens, and Constables (that shall not assess the Tax imposed upon the Parishioners by the Justices at their *Easter Sessions*, towards the relief of disabled Soldiers and Mariners) any Justice of Peace dwelling in that Parish, (or if none dwell there) in the parts next adjoining, may assess the same: And the same Justice of Peace may also in default of the Church-wardens and Constables, levy the same by Distress and Sale of the Goods of the Party so refusing or neglecting, rendering to the Party the overplus, &c.

§. 4. "Which Church-wardens and Petty Constables shall collect it, and  
*Payment.* "pay it to the High Constable of that Division, ten days before every  
*Treasurers.* "Quarter Sessions. Which High Constable shall, at the Sessions, pay the  
 "same to two Justices, or one of them; or to two such persons, or one of  
 "them, as shall be elected by the more part of the Justices, who shall  
 "continue only for one year, and shall give up an accompt the *Easter*  
 "Sessions, or within ten days, to the next elected.

§. 5. "If Church-warden or Petty Constable, or his Executors, or Admi-  
*Failure of* "nistrators, shall fail of payment, he shall forfeit 20 s. If High Constable,  
*Payment.* " &c. fail of payment, he shall forfeit 40 s. to be levied by Distress and  
 "Sale by the Treasurer.

"If the Treasurer his Executors or Administrators, fail to give up his  
*Treasurers* "accompt, or be negligent in his charge, the major part of the Justices in  
*Accompt.* "Sessions, may set a Fine not exceeding 5 l.

§. 6. "Every Soldier so disabled, being in the Kings pay, or returning from  
*To whom* "Sea, shall, if able, repair to the Treasurer of the County, where he was  
*application* "prest, or if not prest, to the Treasurers of the County where he was  
*is to be* "born, or last inhabited, by the space of three years at his election: And  
*made.* "if not able to travel to the Treasurer of the County, where he shall first  
 "arrive, and shall bring a Certificate under the Hand and Seal of the

"General of the Camp, or Governor of the Town, under which he ser-  
*The Certifi-* "ved; and of the Captain of the Band, or his Lieutenant; and in their  
*cate.* "absence, from the Marshal or Deputy; or from the Admiral or General  
 "at Sea; or from the Captain of his Ship, containing a particular of his  
 "hurts and services: Which Certificate shall be allowed by the General  
 "Muste-Master, Resident in *England*, or Receiver General of the Muste  
 "Rolls, the Treasurer and Comptroller of the Navy under his hand; up-  
 "on which Certificate the Treasurers shall give him a proportionable re-  
 "lief until the Sessions: At which time, the Justices, under their hands,  
 "to make a grant of the same for his life, if it be not altered, and the Trea-  
 "surer shall pay it; so as to any one that hath not born office in the Wars,  
*Toe sum.* "be not assigned above 10 l. nor to any that hath born office above 15 l.  
 "nor to a Lieutenant above 20 l.

"The Justices of Peace may in their General Quarter Sessions, upon  
*Alteration.* "just cause alter diminish, or revoke the same from time to time.

§. 7. "If such maimed Soldiers and Mariners shall arrive in a County, far  
*Distance.* "remote from the place where they are to have their Pensions, the Trea-  
 "surers of the County where they arrive, may give them relief for their  
 "journey, upon their Certificate, with a Testimonial; and so Treasurer  
 "of the next County, until they come to the place where they are to have  
 "their Pension settled.

§. 8. "The Treasurers shall keep a Book of all sums they levy, and of the  
*Accompts.* "Persons to whom they give any relief, and preserve every Certificate:  
 "And if any Treasurer shall wilfully refuse to give, or distribute any relief  
 "accord-

"according to that Act, the Justices of Peace in their Sessions, by their  
"discretions, may Fine such Treasurers, to be levied by Distress and Sale,  
"to be prosecuted by any two of them, whom they shall authorize.

43 El. 3. "If such Soldier or Mariner be taken begging, or shall counterfeit a §. 9.  
"Certificate, he shall be punished as a Rogue. Begging.

43 El. 3. "The surplusage of such stock, shall be ordered and bestowed by the Surplusage.  
"more part of the Justices in their Quarter Sessions by their discretion, to  
"such charitable uses, in such manner as is limited by the Statutes for the  
"Poor, and against Rogues.

43 El. 3. "The Forfeitures of every Treasurer, Collector, Church-warden, Penalties  
"and other officers by that Act, shall be employed as the Money to be  
"levied, and the overplus is directed, or may be reserved as a stock for Sol-  
"diers and Mariners.

43 El. 3. "Justices of Peace in the County, shall not meddle as to this matter Corporati-  
"in any City, Borough, Place, or Corporation, where is any Justice of ons.  
"Peace; but the Justices of Peace, Majors, Bailiffs, and other Head Offi-  
"cers of Cities, Boroughs, Places, and Towns Corporate, where there is  
"any Justice of Peace, may put in Execution the said Act in all things, as  
"Justices of Peace of the County may do.

43 El. 3. "Relief shall be given to such Soldiers and Mariners out of the stock §. 10.  
"of the County, out of which he was prest; but if that Taxation shall be who to be  
"before employed, or they shall not be prest men, then out of the place fined.  
"where they are born, or last inhabited, by the space of three year, at his, or  
"their election.

43 El. 3. "This Act was to continue to the end of the next Session of Parlia- Conti-  
"ment. And 21 Jac. c. 28. was continued, and by 3 Car. 2. c. 3. was fur- nuance of the  
"ther continued: And now by the Statute of 17 Car. 1. c. 4. continued Act.  
"until some other Act shall be made for the continuance or dis-continu-  
"ance thereof.

44 Car. 3. "For Relief and Reward of such Persons as have lost or hazarded §. 11.  
"their Lives, Limbs, or Fortunes, in the service of the King or His Father, Additional  
"every Parish shall be charged weekly to the payment of such sum as Levy.  
"they have been rated by 43 El. c. 3. And likewise such further sum as  
"the Justices of Peace, in their Quarter Sessions, shall adjudge meet to be  
"assessed on every Parish or Chappelry, that hath distinct Officers; so as  
"such additional sum exceed not 2 s. 6 d. nor be under 3 d. in any Parish,  
"in each week, to be levied, and paid in such manner, and under such  
"penalties, as is directed by 43 El. c. 3.

44 Car. 3. "Every Officer, Soldier, or Mariner, maimed, aged, indigent, or dis- §. 12.  
"abled in Body, during the late Wars, or that are so impoverished by To whom  
"their sufferings under the usurped powers, that they are destitute of a  
"competent subsistence, and have continued faithful to their trust, and  
"no ways deserted the same, shall repair to the place where he was last  
"settled, before he took up arms, with a Certificate of his Service and  
"Hurts, under the hand of his Captain or Commissioned Officer, and  
"to the two next Justices of the Peace of that County, who shall examine  
"the truth of that Certificate by the Oath of the Party, and such wit-  
"nesses as he shall produce, and assign him relief, until the next Quarter  
"Sessions, where a yearly Pension shall be settled under such power of re-  
"vocation, as is appointed by 43 El. c. 3. And if the Captain or Officer be  
"dead, two Justices upon request, by Persons of credit, may give such  
"relief as in Cases of Examination. It seems hereby, that where such Cer-  
"tificate of the Officer cannot be had, the Justices of Peace in Sessions have  
"no power to grant any Pension. *Quere.*



- §. 13. "And where any have died or suffered death in that service, over  
 "and besides the Parochial relief (who are thereby required to have of  
 "them a special regard) the Treasurers shall pay the Widow and Or-  
 "phans of the deceased, such relief as the two next Justices shall think  
 "fit, which shall be paid out of the Surplusage of such Stock after Pen-  
 "sions paid.
- §. 14. *Musters.* "If any commanded to be Mustered, shall absent himself without  
 "lawful impediment; or coming, shall not bring his best Furniture, Array,  
 "or Armor, shall be imprisoned ten days without Bail, unless he agree to  
 "pay a Fine of 40 s. to the Queen; which is to be Estreated into the Ex-  
 "chequer by the Commissioners, &c.
- §. 15. *Bribes.* "If any Person authorised to Muster or Levy Men in War, or for the  
 "defence of the Kingdom, shall take or receive any Money or Reward,  
 "to spare any Person, shall forfeit ten times so much as he shall take.
- Pay.* "If any Captain, or other, having charge of Soldiers, shall for any  
 "advantage License a Soldier to depart, he shall forfeit ten times the  
 "thing taken. And if he shall not pay the Soldier his pay within ten days  
 "after he shall receive it, he shall pay the Soldier treble so much.
- "The moiety of Forfeitures (except pay) to the Queen, the other  
 "moiety to the Prosecutor, in any Court of Record, by Information, or  
 "otherwise.
- "The Justices of Peace in Sessions, may by Presentment or Indict-  
 "ment, hear and determine the offences, and upon conviction may Award  
 "the party to prison, till payment of the Forfeitures. A moiety where-  
 "of to the party that gives evidence, if conviction be upon evidence;  
 "otherwise the whole Forfeiture to the Queen. 4 & 5 P. & M. 3.
- §. 16. *work.* "If any Poor Soldier or Mariner, coming from, or beyond the Seas,  
 "shall repair to his place of Birth, &c. and cannot there get work, then up-  
 "on his complaint, any two Justices of Peace near the said place, shall take  
 "order (by their discretion) to set him to work; and for want of work,  
 "the said Justices shall tax the whole Hundred (by their discretion) for his  
 "relief till sufficient work may be had.
- "A maimed Soldier came to the County for relief at the Sessions, but  
 "because it appeared, that he was not settled, but vagrant at the time of his  
 "being prest, he was not relieved by Pension from the County Stock, but  
 "sent to the place of his settlement. Ord. 2. O. 4. Car. Lib. Sess. pa. Mid.  
 "13 Car. 2. 6. See the several Acts concerning the Militia. viz. 14 Car. 2.  
 "c. 3. And 15 Car. 2. cap. 4. St. 3.

## Spices. CHAP. XCV.

- §. 1. "All Spices, Wares, Drugs, and Merchandises Garbleable, viz. Pep-  
 "per, Cloves, Mace, Nutmegs, Cinnamon, Ginger, Long-Pepper,  
 "Worm-Seeds, Cummin-Seeds, Anniseeds, Coriander-Seeds, Binny-Pepper,  
 "Almonds, Dates, Galls, Gums of all kinds Garbleable, Spikenard, Ga-  
 "lingal, Turmeric, Setwel, Cassia Fistula, Guinny-Pepper, Senna,  
 "Barberies, Rice, Erius, Stavifaker, Calamus, Fenugree, Cassia Lignum,  
 "Grains, Careway-Seeds; and all other Spices, Drugs, Wares, and Mar-  
 "chandises Garbleable, that have or ought to be garbled, &c. in London,  
 "and the Liberties, shall for the usual Fees be garbled, &c. by the Gar-  
 "bler, his Deputy, or Servant, before the same be sold, upon pain of For-  
 "feiture thereof, or the value thereof sold.

"And

"And if they be afterwards mixed with Garbles, &c. the same so §. 2.  
 "mixed shall be forfeited or the value thereof.

"The Garbler of *London, &c.* his Deputy or Assigns, may enter in §. 3.  
 "the day time into any House, Shop, Warehouse, &c. To see if the Wares,  
 "&c. be Garbled, &c. if ungarbled, to cleanse them, &c. A moiety of  
 "the Forfeitures to the King, the other to the Prosecutor in any Court of  
 "Record, &c.

Stock of the Shire. CHAP. XCVI. V. 53.

**I**N the default of the Parishioners, Church-wardens, and Constables §. 1.  
 (that shall not assess the tax imposed upon the Parishioners by the Justices *One Justice.*  
 at their *Easter Sessions*, towards the relief of the prisoners in the *Kings Bench* and *Marshalsey*; and of the Hospitals of that County; and of the *To what*  
 losses by Fire, Water, and other Casualties, and relief of the Poor within *us they*  
 that County) any Justice of Peace dwelling in that Parish, or (if none *must be im-*  
 dwell there) in the parts next adjoining, may assess the same: And the *ployed.*  
 same Justice, or any other Justice of Peace of that limit (in default of the *Levyng.*  
 Church-wardens and Constables) may levy the same by Distress and Sale  
 of the Goods of the Party, refusing or neglecting to pay his part thereof,  
 rendring to the Party the overplus; and in default of such Distress, any  
 Justice of Peace of that limit may commit such person to prison, there to  
 remain without Bail, till he hath paid the same.

Also in default of the Parishioners, Church-wardens, and Constables §. 2.  
 (that shall not assess the Tax imposed upon the Parishioners, by the Justices *Soldiers.*  
 at their *Easter Sessions*, toward the relief of maimed Soldiers and Mari-  
 ners) any Justice of Peace dwelling in that Parish, or (if none dwell  
 there) in the parts next adjoining, may assess the same: And the same  
 Justice of Peace (in default of the Church-wardens and Constables) may  
 levy the same by Distress and Sale of the Goods of the Party refusing or  
 neglecting to pay his part thereof, rendring to the Party the overplus. But  
 in default of such Distress, the Justices of Peace may not commit such  
 person to Prison, as they might in the former case, 43 *El. cap. 3. P. Cap-*  
*taine 11.*

Now in these, and other Rates and Taxations, you shall observe these  
 Rules following.

1. First, That the most reasonable rating of Land, is by the yearly §. 3.  
 value, and quality thereof, and not by the quantity or content. *Taxat.*

2. He that occupieth (in his own hands) Lands lying in several  
 Parishes, shall be charged in every Parish proportionably for his Land  
 there.

3. The Fermor shall be rated for the Lands, and not the Lessor, or  
 Land-lord.

4. A Man (*sc.* the Landlord) shall not be rated or taxed for his Ferm  
 Rents, in as much as the Fermor or Occupier of the Land is chargeable for  
 the same Land. So where my Fermor is assessed by his Goods, I ought not  
 to be assessed for my Rent of the same Ferm. *Br. Quinz. 2. 4. 7 H. 4. 35.*  
*6 H. 4. 35.*

'Upon a complaint to the Judges of Assize in the County of *Lincoln*,  
 'it was resolved and ordered, That the Lands in the Parish, and not the  
 'Rent neither of that Land, nor of other Lands could be taxed. Sir *An-*  
*thony Irbies Case, Assize Linc. 1633.*

By Goods in most Cases, a Man may be rated as well as by Lands, but not both by Goods and Lands, as it seemeth.

The like you may see in divers Acts of Subsidies, wherein there is usually a special Proviso, That no person shall be taxed both for his Lands and Goods, nor double rated. See the Acts of Subsidies, *An. 7, 18 & 21 Jac. & An. 27, 29, 31, 35, 39, & 43 Eliz. & 4 Car.* and yet see 44 E. 3. *Br. Customs 6.* where a Tax of Ten pound was made by the Parishioners for the amending of their Church, and was taxed to be levied of every Plough-Land six pence, and of every Cow one penny, and of every ten Sheep half-penny, and *7. s.* for his Land, Cows, and Sheep, was rated at *9. s.* and was distrained for the same, and upon a Replevin by *7. s.* sued, no Exception was taken to the manner of rate imposed upon *7. s.* But note, that the said Tax was made by his consent, *Et omnis consensus tollit errorem, Co. 5. 36. & 40.*

So then he that hath both Lands and Goods shall be charged by the best (of them both) but he is not to be double charged, *sc.* by the one and the other; and yet in some places they do use to charge one person both by Lands and Goods: Which if it be warrantable by Law, yet it seemeth to be with this difference, *sc.* That where a Man occupieth Land, and also hath in his hands a great estate or stock of Merchandise, or be also a Clothier, Maltster, or the like, that such person peradventure may be charged by his Lands, and also by such his Stocks; but for such Goods, or Stock of Cattle, whereby a Man doth occupy, compass, or manure his Lands (as for Horses, Sheep, Kine, &c. wherewith he stocketh his Land) a Man shall not be charged, *sc.* if he be charged by his Land, he shall not also be charged for such his Cattle which do manure the same Land.

Also where a Man is rated by his Goods, it seemeth reasonable that such Goods be rated after the value of Lands to be purchased, *sc.* One hundred pounds in Stock or Goods, to be rated after Five or six pound *per annum* in Lands. And so after the like proportion, for a greater or lesser estate in Goods, Stock, Merchandise, or the like.

Note, Where a Man is charged by Goods, they must be *bona notabilia*, as it seemeth; and yet to the Subsidy, Men are rated not only by their Stock of Merchandise, or Cattle, Corn, Householdstuff, or other moveable Goods which are *Notabilia*, but also to their Coyn and Debts owing to them (deducting such Debts as they ow to others, and such Debts as be desperate :) But there the Party over-rated, upon his complaint to the Commissioners, and his Oath taken before them, that his Goods, Coyn, or Debts be not of such value (which Oath the said Commissioners are authorised to take by the Statute) the said Commissioners may abate the said Assessments according, as upon such Examination shall appear to them just. See the afore-cited Acts of Subsidies.

Also for Goods, a Man shall be charged only in that Town where the Goods be at the time of the Assessment. *Br. Quinz. 4. & 6.* See the Statute 9 H. 4. c. 7.

Also if a Man be assessed for his Goods in D. when as he hath no Goods there, and be distrained for such Assessment, he may have an action of Trespass. *B. Quinz. 3. & 4.*

S. 4.  
Officers.

The Constables (or other Officers) and greater part of the Parishioners (upon a general warning given in the Church) assembled, may make such Taxations by Law. See *Coke 5, 6, 7. Fi. 49.*

The like may be done by the Church-wardens, and the greater part of the Parishioners, for Church charges.

And



And if the greater part of the Parishioners will not meet upon such warning given, it seems the Officers, and such of the Parishioners as will meet, may make such Taxations.

Note, That such Taxations being made for a Commonwealth, as for the making or amending of a Bridge, Highway, Causey, Sea-bank, or the like; they shall bind all persons (although they assent not) 44 Ed. 3. 18, 19. *Br. Customs* 6. Co. 5. 63. *Fi.* 49.

And so of Taxations made to repair the Church, or for other common Town charges (as it seemeth) where such Taxations are made by the greater part of the Parishioners, as aforesaid. See Co. 5. 63. & 67. & 21 H. 7. fol. 20. b. & 8 E. 1. *Fitz. Aff.* 413.

Also when Assessments are made for the Reparations of Bridges, Highways, Sea-banks, Causeys, and the like, it seemeth, That the sum assessed upon particular Men (or Towns) ought to be competent and reasonable, having regard to the benefit which the Parties assessed or charged, shall or may have and enjoy by reason of the said Assessment, and so reasonable as that the Party shall or may have more benefit then charge thereby; and then such Assessments cannot be reputed burthensome, or a charge to the Subject, when he shall or may reap benefit thereby. See 13 H. 4. fol. 14. & Co. 5. 63. §. 5. Sewers.

If a Township be amerced, and the Neighbors do (by assent) assess a certain sum upon every Inhabitant, and do agree, that J. S. shall gather it up; and that if it be not paid such a day, that J. S. shall distrain for the same, in such case a Distress taken by J. S. (for such rates behind) is good, *Br. Cust.* 6. *DoB.* & *Stud.* 74. b.

And Issues Estreated upon the Parish, may by order of Sessions be equally rated upon the Inhabitants, and levied accordingly, *Ord.* 16. *May* 8. *Car. lib. Seff. Pac. Mid. Consimil. Ord.* for the Inhabitants of *Falham* 9 April. 11 *Car.* Inhabitants of *Eling.* *Ord.* 2 Dec. 9 *Car.*

subsidy. CHAP. XCVII. V. 54.

“AN Act of Parliament 22 & 23 *Car.* 2. was made to lay certain Impositions on Law, from the first of *May*, 1671. for nine years, §. 1. Tax on Law.  
“which as they concern Justices of Peace, Clerks of the Peace or Sessions,  
“are as followeth.

“For any Conveyance, Surrender, Release, or Deed, Inrolled. 5 s.

“For every Recognisance Inrolled or Entered of Record. 7 s. 6 d.

“This was some time paid, but is since forborn to be demanded.

“The Clerk of the Peace is to receive the duty.

“The Clerk of the Peace shall make a true Entry thereof in a Book; and make accompt upon Oath, when required, and make payment the first days of *Michaelmas* Term, *Easter* and *Hillary* Terms, to such as the King shall appoint under the Great Seal to receive the same; and if he neglect, or refuse to receive or pay the duty for the first offence, he shall lose ten times the Money, to be recovered by Action, and for the second offence lose his Office.

If any Person that ought to be set to the Subsidy, do by his craft or covin escape the Taxation, and it be proved before two Justices of Peace of that County; then shall he be charged at the double value of so much as he ought to have been taxed at, and shall further be punished at the discretions of the said Justices. See 7 & 21 *Jac.* and divers former Acts of Subsidies.

## Swearing. CHAP. XCVIII.

§. 1. **I**F any Person or Persons shall prophanely swear, or curse in the hearing of any Justice of Peace of the County, (Major, Bailiff, or Head-officer of any City or Town corporate) where such offence shall be committed; or shall be thereof convicted by the Oaths of two witnesses, or by confession of the Party before any such Justice of Peace, or Head-officer, &c. *Penalty.* Every such offender shall for every time so offending, forfeit and pay to the use of the Poor of that Parish where the offence shall be committed, the sum of 12 d. 21 Jac. c. 20. & 3 Car. 4. 21 Jac. 20.  
3 Car. 4.  
17 Car. 1.  
c. 4.

Every Justice of Peace, and every such Head-officer may minister the said Oath to every witness. 21 Jac. c. 20.

§. 2. *How to be Levied.* Every Justice of Peace, and every such Head-officer, may make their Warrant to the Constables, Church-wardens, and Overseers of the Poor of that Parish where the said offence shall be committed; and the said Constable, Church-wardens, and Overseers of the Poor, by vertue of that Warrant, may levy the same sum and sums of Money by Distress and Sale of the offenders Goods, rendring to the Party the overplus. *Ibid.*

In defect of such Distress, the offender (if he or she be above the age of twelve years) shall by Warrant from such Justices of Peace, or Head-officer, be set in the Stocks by three whole hours. But if the offender be under the age of twelve years, and shall not forthwith pay the said sum of 12 d. then he or she, by Warrant of such Justice of Peace or Head-officer, shall be whipped by the Constable, or by the Parent, or Master, in the presence of the Constable. *Ibid.*

But every offence against this Law, shall be complained of, and proved as aforesaid, within twenty days after the offence committed. *Ibid.*

*Vide tit. Oaths.*

*Tanner, vide Leather.*

## Tobacco. CHAP. XCIX.

§. 1. *Penalty of Planting.* **N**O Person may Set, Plant, improve to grow, make or cure any Tobacco in Seed, Plant, or otherwise, upon any Ground in England, Wales, Isles of Guernsey, Jersey, Berwick, or Ireland, upon pain of forfeiture of 40 s. for every Pole or Rod of Ground Planted, Set, or Sown; and so proportionably for any greater quantity: One moiety to the King, and the other moiety to him who will sue for the same in any Court of Record. 12 Car. 2.  
c. 33.

And by the Statute of 15 Car. 2. c. 7. the Penalty of 10 l. for every Pole, or Rod of Ground, is given above the 40 s. by the said Act of 12 Car. 2. c. 34. And one third part thereof given to the King, another third part to the Poor of the Parish, and the other third part to the former.

§. 2. *Whol may destroy it.* And all Sheriffs, Justices of the Peace, Majors, Bailiffs, Constables, and every of them, upon information or complaint made to them, or any of them, of any such Tobacco Sown or Planted within their Precincts, shall within ten days after such complaint, cause the same to be destroyed. And any person resisting or opposing the Execution of the said Act, to forfeit 5 l. for every offence, to be recovered as aforesaid, and by Distress and Sale of the offenders Goods; and for want of Distress, the offender

“offender to be imprisoned two moneths without Bail. “And over and  
 “above the Penalties appointed by this Act for such as resist by the Statute *Resistance*  
 “of 15 Car. 2. c. 7. The Party resisting shall be committed to the Goal  
 “without Bail, till he enter into a Recognizance to the King, with two  
 “Sureties of 10 l. Penalty, not to do so again; and by the Statute of  
 “22 & 23 Car. 2. shall forfeit 5 l. to be levied by Distress and Sale; and  
 “if no Distress, by imprisonment for three moneths without Bail, upon  
 “Conviction before two Justices of Peace.

“All Justices of Peace a moneth before every General Quarter Sessi-  
 “ons, shall issue Warrants to the High Constables, &c. requiring them to  
 “make search what Tobacco is Sowed, Set, Planted, growing, curing,  
 “cured, or made, and to make a Presentment in writing, upon Oath next  
 “Sessions, of the names of the Persons Planting, &c. the quantity of  
 “Land, the immediate Tenants or present occupiers, who shall be deemed  
 “Planters thereof.

“Which Presentment, filed in Sessions, shall be a Conviction, unless *§. 3. Inquiry.*  
 “the Persons presented (having notice by the delivery of a Copy of the  
 “Presentment to him, or leaving it at his dwelling house, or usual place  
 “of abode, in the presence of one or more credible witnesses, ten days be-  
 “fore the next Sessions) shall at the next Quarter Sessions, after such no-  
 “tice, Traverse the same Presentment, and find Sureties for prosecuting  
 “his Traverse the next Sessions, after such Traverse. 22 & 23  
 “Car. 2.

“All Constables, Tithingmen, Bailiffs, and other publick offences in  
 “their Jurisdictions, within fourteen days after Warrant from two or  
 “more Justices of Peace, calling such assistance as they find necessary, may  
 “destroy the same Tobacco. 22 & 23 Car. 2.

“If such Tobacco shall be suffered to stand unconsumed after the Re- *§. 4. Officers neglected.*  
 “ceipt of such Warrant, then such Officers shall forfeit 5 s. for every Pole,  
 “Perch, or Rod, and so proportionably for a greater or lesser quantity.  
 “One moiety to the King, the other moiety to the Informer. 22 & 23  
 “Car. 2.

“If any Person refuse or neglect to assist such Officer for every such *§. 5. Assistance.*  
 “offence, he shall forfeit 5 s. upon Conviction thereof, before two Justi-  
 “ces of Peace, to be levied by Warrant from such Justices by Distress  
 “and Sale; and if no Distress, the Party to be committed to the Gaol  
 “without Bail, for one week. 22 & 23 Car. 2.

“This Statute to continue for nine years, and thence to the end of  
 “the next Session of Parliament.

“*Timber wide Wood.*

*Transportation, Importation, Exportation.* CHAP. C. V. 56.

1 & 2 Ph.  
 & Ma. 5.  
 P. Just. 27.

IT should seem by the words of the Statute, that any one Justice of *§. 1. One Justice.*  
 Peace may inquire of, hear, and determine (as also may examine the  
 Mariners, and every other person) of all and singular the offenders against  
 the Act, 1 & 2 Ph. & Ma. Provided for the restraining of carrying Corn,  
 Beer, Butter, Cheese, Herrings, and Wood, beyond the Sea. But *Quere.*  
 “By which Statute, being at or under these prices, it might be transported.

	s.	d.	
“Wheat	6.	8	} the Quarter.
“Rye	4.	0	
“Barley	3.	0	

Yet



Yet note, That every Man may transport Corn, it being at these prices following (except it be prohibited by Proclamation) *sc.*

Wheat	} the Quarter	32 s.
Rye		20 s.
Barley and Malt		16 s.
Pease and Beans		16 s.

21 Jac. 4.  
3 Car. 4.

Beer

Also that every Man may transport any Beer, when the price of a Quarter of Malt exceeds not the sum of Sixteen shillings. 3 Jac. cap. 11. 21 Jac. 28.

§. 2.  
Corn.

And it is holden to be great policy, to provide that Corn be always of a reasonable and competent value, it being an assured means to increase and advance Husbandry and Tillage, the ancientest of all Trades and Professions, and commanded by God to Adam, *Gen.* 3. 23. One of the greatest commodities of this Realm, and much respected and favored, as well by the Common Law, as also by the common assent of the King, the Lords and Commons in many Parliaments, *Co.* 4. 39. See the Statutes, 17 R. 2. c. 7. 4 H. 6. c. 5. And 1 & 2 Ph. & Ma. c. 5. And besides, it is the means whereby the Fermors are better enabled to pay their Landlords their Rents, to maintain their own Families, and to set on work, and to relieve their poor Neighbors.

For, and touching the Transportation of Corn, Cattle, Victuals, and other things. See 22 Car. 2. And 15 Car. 2. 7. 12 Car. 2. *Hic tit.* "Corn.

§. 3.  
Cattle.

"There shall be paid for every head of great Cattle brought elsewhere, then from Scotland, after the first day of July; and before the twentieth day of December, and from Scotland, after the twenty fourth day of August, and the twentieth day of December, 20 s. Ten shillings to him that selleth them, and ten shillings for every Sheep imported after the first day of August, and before the twentieth day of December, to be recovered by Action. 15 Car. 2. c. 7.

§. 4.  
Cattle and  
Victuals.

"18 Car. 2. c. 2. The bringing in of Cattle is declared a Nuisance, and if any great Cattle, Sheep, Swine, or any Beef, Pork, or Bacon, shall be imported, or brought into England, any Constable, Headborough, Tithingman, Church-wardens, or Overseers, within their Limits may seize the same, and keep them for forty eight hours in some publick place; in which time, if the owner shall make it appear by the Oath of two witnesses, unto some Justice of Peace, That the same came not from beyond the Seas, the same by Warrant from a Justice, shall be delivered to the Party: But if he shall not make it so appear, the same shall be forfeited, One moiety to the seiser, the other moiety to the Poor where the same are seized, the Island of Man excepted, so as they be of their own breed, and exceed not 600 in one year, and be landed at Chester.

§. 5.  
Plantations

"Suit may be commenced in the Sessions for any Forfeiture accrued upon the Statute of 15 Car. 2. c. 7. whereby is prohibited the Importing any Commodities of the growth or make of Europe, into any place in His Majesties Possession, in Asia, Africa, or America (except Tangier) but what shall be shipped in England or Wales, and that in English Shipping, &c.

§. 6.  
Lace and  
Small  
wares.

"No person shall sell or cause to be sold, or offer to sale, or export any Foreign Bone-lace, Cut-work, Imbroidery, Fringe, Bandstrings, Buttons, or Needle-work, made of Thred, Silk, or any or either of them, in parts beyond the Seas, or import, bring in, send, or convey, or cause, &c. into England, &c. any such Foreign Bone-lace, &c. upon pain, That the person that shall sell or offer to sale Foreign Bone-lace, &c. shall "forfeit

"forfeit for every offence 50 *l.* and the whole Bone-lace, &c. And upon pain that he that shall import, &c. such Foreign Bone-lace, &c. shall forfeit the whole Bone-lace, &c. and 100 *l.* for every such offence. A moiety thereof to the King, and the other moiety to the prosecutor in any the Kings Courts of Record, &c. 14 *Car.2. c.13.*

"Upon Complaint and Information to any Justice of Peace at times reasonable, he shall issue out his Warrant to the Constables, to enter and search for such Manufactures in Shops, being open, or Ware-houses, and Dwelling-houses of the Persons suspected to have the same, and seise the same. 14 *Car.2. c.13.* §. 7. *Search.*

"No Person shall give, exchange, sell, convey, and deliver into Scotland, to the use of any Scotchman, nor give, &c. into any place beyond the Sea, out of this Realm, or the Dominions thereof, any Horse, Gelding, or Mare, without License from the King, under the Great Seal, or Privy Signet. No Person shall give, &c. to any Scotchman in England, to the intent to be conveyed into Scotland, any Horse, Gelding, or Mare, or do convey or carry any Horse, Gelding, or Mare, into any Foreign parts, without such License, upon pain, to forfeit the same to the King, and also 40 *l.* for every one. A moiety to the King, the other moiety to the Prosecutor in the Kings Court, and imprisonment for a year. 1 *E.6.* §. 8. *Scot. Horse.*

5. 5 *El. 19.* "Justices of Peace in their Sessions, may inquire of the offences, and every Subject may arrest the Persons offending against that Act. That Act shall not prejudice any that carry Horses beyond the Sea, in the Kings service, nor to the Warden of the Cinque Ports, that may give or send six Horses or Geldings Beyond Sea, in every year, nor to the Master of the Horse, as to the duties of his place. §. 9. *Who may Inquire.*

3 *Mc. c.1.* "Every Person when the price of Malt exceeds not the sum of 16 *s.* may transport of his own or buy, and transport to any part beyond the Seas, in Amity and League with England, in Ships or Vessels, any Beer with the Cask, and the King shall receive 8 *s.* 6 *d.* for Impost; and 1 *s.* 6 *d.* for Custom for every Tun, of every Subject, and 10 *s.* Impost, 22 *d.* of every Stranger in full for all duties. §. 10. *Beer.*

"Touching Exporting Sheep. *Vide tit. Sheep.*

"Touching Exporting Wool. *Vide tit. Wool.*

"For Importance of Fish. *Vide tit. Fish.*

### Trespass. CHAP. CL. V. 57.

43 *El. 7.*  
P. 1. **A**Ll and every leud and mean Persons, which shall unlawfully cut or take away any Corn growing, or rob any Orchards or Gardens, or break or cut any Hedge, Pale, Rail, or Fence, or dig, pull up, or take away any Fruit Trees, or shall cut or spoil any Woods, Underwoods, Poles, or Trees standing (not being Felony) and their Procurers or Receivers, knowing the same, being thereof convict by Confession of the Party, or by the Testimony of one sufficient witness upon Oath before any one Justice of Peace (where the offence shall be committed, or the offender apprehended;) shall for the first fault give the Party wronged such recompence, (and within such time) as by any one Justice of Peace (of the County where such offence shall be done) shall be appointed. And if such offender shall be thought (in the discretion of the said Justice) not able, or do not make satisfaction accordingly; then the said Justice shall commit the said offender to some Constable, or other inferior Officer (where the

§. 1. *Orchards, Corn, and Fences.*

the offence shall be committed, or the offender apprehended) to be whipped.

Also it seemeth, that for the second fault; and every other offence whereof such offender shall be after convicted in form aforesaid, such offender shall be whipped as aforesaid, without any satisfaction to be taken. *Ibid.*

§. 2.  
Officers  
neglect.

If any Constable or Inferior Officer, do refuse, or do not, at the com- P. 2.  
mandment of the Justice (by himself, or some other by him to be appointed) execute upon the offender, the punishment aforesaid, the said Justice of Peace may commit such Constable, &c. to the Common Gaol, there to remain without Bail, until the said offender be by the said Constable, or by some other by his procurement, whipped, as aforesaid.

But no Justice of Peace shall execute this Statute for any of the of- P. 3.  
fences aforesaid, done unto himself, unless he be associated and assisted with one or more other Justices of the Peace whom the offence doth not concern.

It seemeth, that any one Justice of Peace (not being the Party grieved) may send such offenders for their second fault, &c. to the House of Correction, as idle and disorderly persons, there to be detained, &c. at the discretion of the said Justice of Peace; and this by force of the Statute, 7 Jac. 4. 'especially, if they be common offenders in this kind; or may 'bind them to their Good Behavior, and so over to the next Quarter Sessions, and by order from thence, to be sent to the House of Correction, there 'to be continued some convenient time.

'But for the gleaning and leaving of the Harvest, &c. God com-  
'mandeth, that it be left for the Poor, the Fatherless, the Widow, and the  
'Stranger, *Levit. 19. 9, & 23. Dent. 22. 24.* And it were worthy the  
'consideration of the Justices, 'to take some course that such only might  
'have the benefit of gleaning, and not Fermors and Tradesmen, that in  
'many places in Harvest time set their Servants to that employment,  
'which is no better then to rob the Poor of what properly belongs to  
'them.

§. 3. "If any shall by night or day unlawfully break, cut down, cut-out or  
"destroy any Head or Dam of any Pond, Pool, Mote, Stagne, Slew, or  
"several Pit, wherein Fish are, or shall be put, or shall Fish therein, with-  
"out authority, and convicted thereof at the Suit of the King, or party  
"grieved, shall be imprisoned three moneths, and pay the party treble  
"damages; and after the three moneths, be bound to the Good Behavior  
"for seven years, with sufficient Sureties, or else continue in Prison for  
"seven years without Bail. For the recovery herein, *see tit. Hunting.*

§. 4. "No persons without his own Guns shall slay, take, or cause to be  
"taken by means of any craft or engine, any Herons, unless by Hawking,  
"or with Long-Bow, upon pain to forfeit for every Heron 6 s. 8 d. For the  
"Conviction, *see tit. Hunting. See Postea, tit. Wood.*

#### Tythes. CHAP. CII. v. 38.

§. 1. **T**WO Justices of the Peace (the one being of the *Quorum*) upon com-  
plaint by any competent Judge of Tythes, for any misdemeanor of  
the Defendant in a Suit of Tythes (or for other duties of the Church) may  
cause him to be attached, and committed to ward, there to remain without  
Bail, until he find sufficient Sureties (unto the said Justices) by recognisance  
to the Kings use, to obey the Process and Sentence of that Judge.

Also



Also upon Complaint or Certificate in writing by any Ecclesiastical Judge, that hath given definitive sentence in the case of Tithes against one which wilfully refuseth to pay the Tithes, or sums of Money so adjudged; two such Justices of Peace may cause the party to be attached, and committed to the next Gaol, there to remain without Bail, till he find such Sureties (as afore said) to perform that Sentence. §. 2.

21 H. 7. 8.  
P. Just.  
104.] *¶* *On si le partie disobey tiel sentence, il poit este excommunge par tiel Contumacy; & donque si cesty issint excom: ne voile per 40 jours este reconcile al eglise, sur Certificat fait al Roy per la Ordinary en le Chancery, le partie serra mise en prison tanque il voile satisfaire leglise, & ceo per un brief de Excom, Capiendo. Fi. 41.* §. 3.

## Tyle. CHAP. CIII. V. 59.

17 Ed. 4. 4.  
p. 3. 4.  
Lamb. 197.  
Crompt.  
130. *I*T seemeth by the words of the Statute, That any one Justice of Peace may inquire, hear, and determine (by examination, or otherwise by their discretion) of all and singular the offences committed in Tyle-making, *sc.* If they be not made good, and of Earth well prepared, and also of due affize in length, bredth, and thickness) and may assess the Fines limited by the same Statute; and may call before him such as have best knowledge in Tyle-making, and appoint them searchers of the said defaults; But Mr. Lamb. 197. maketh a doubt thereof. §. 1.

But the Justices so resolved, and accordingly made an Order for Licensing certain persons to be searchers of all manner of Tyle made within the County of Middlesex for four years. Ord. 5. 08. 7 Jac. lib. sess. pa: Mid.

## Watch. CHAP. CIV. V. 60.

*I*N great Towns walled, the Gates shall be shut up from the Sun-setting until the Sun-rising; and no Man shall lodge in the Suburbs, or any place out of the Town, from nine of the clock till day, except his Host will answer for him. 5 H. 4. c. 3. 5 E. 3. 14. §. 1.

13 Ed. 1.  
P. Just.  
130. Every Justice of Peace may cause Night-watch to be duly kept, for the arresting of Persons suspect, and Night-walkers (be they strangers or others) that be of evil fame or behavior: And this they may do by force of the Commission, the first Assize. Lamb. 190.

Mid. This Watch is to be kept yearly from the Feast of the Ascension, until Michaelmas, in every Town, and shall continue all the night, *sc.* from the Sun-setting, to the Sun-rising. §. 2.

Winch.  
13 E. 1. 4.  
5 E. 3. 14. All such strangers, or persons suspected, as shall in the night time pass by the Watchmen (appointed thereto by the Town, Constable, or other Officer) may be examined by the said Watchmen, whence they come, and what they be, and of their business, &c. And if they find cause of suspicion, they shall stay them; and if such persons will not obey the arrest of the Watchmen, the said Watchmen shall levy Hue and Cry, that the offenders may be taken, or else they may justifie to beat them (for that they resist the Peace and Justice of the Realm) and may also set them in the Stocks (for the same) until the morning; and then if no suspicion be found, the said persons shall be let go and quit: But if they find cause of suspicion, they shall forthwith deliver the said persons to the Sheriff, who shall keep them in prison until they be duly delivered; or else the Watchmen may deliver §. 3.

deliver such persons to the Constable, and so to convey them to the Justice of Peace, by him to be examined, and to be bound over, or committed, until the offenders be acquitted in due manner. See more of *Watch*, in the title *Felony*.

- §. 4. 'These Watchmen are also to apprehend all Rogues and Vagabonds, 'Night-walkers, Evesdroppers, Scouts, and such like, and such as go 'armed, &c.

Note, That in an Action of false imprisonment brought by one *Sam.* Cro. 3. p. 204. against *Brown* (a Constable of *Chelmsford* in *Essex*) these things were holden for Law concerning Watches, about 32 *Eliz.*

1. First, That no Man is compellable to Watch, except he be an Inhabitant within the same Town.

2. That such as are Inhabitants within the Town, are not compellable to Watch at the will of the Constable, but only when their turn cometh; and therefore *Gawdy* (Justice) said, that the Statute of *Winchester* is, That from henceforth Watches shall be kept as hath been used in times past, &c. And so the manner of Watching is not referred to the will of the Constable, but only to the use heretofore, which is commonly by turn, or by the House.

3. That if a Man who is compellable to Watch, shall contemptuously refuse to Watch upon commandment of the Constable, the Constable *Ex Officio* may set him in the Stocks for such his contempt. *Tamen quere de hoc.* Or else the Constable may present such his default at the Assizes or Sessions of the Peace, &c. Or may complain thereof to any Justice of Peace who may bind the offender to the Good Behavior, and so over to the next Quarter Sessions, &c.

Note also, That both Watching and Warding must be by Men that be able of Body, and sufficiently weaponed.

And note, That Watching is properly intended of the Night, and Warding for the Day time; and for the Warding in the Day time, for the apprehending of Rogues, and the like idle evil Members, is of great use; it therefore is, and must be left to the discretion of the Constable, and Directions of the Justices of Peace to appoint or alter it according to the occasion. *Resol. 36.*

#### Watermen. CHAP. CV. V. 61.

- §. 1. **E**VERY Justice of Peace, as it seemeth, by the general words of the Statute) within the Shires, next adjoyning, to the River of *Thames* (between *Grovesend* and *Windsor*) within his several Jurisdiction, hath power (upon complaint made to him by the Overseers and Rulers of the Watermen and Whirrymen, or two of them, or by the Masters of any such Servants) to examine, hear and determine all offences against the Statute, and to set at large him that shall be imprisoned by such Overseers or Rulers, according to this Act (if there be just cause) and also by his discretion to punish those Overseers & Rulers that shall unjustly punish any person by colour of this Act.

The offences of Watermen against this Statute are these.

- §. 2. 1. No single Man shall be a Waterman there unless he be an House-keeper, or an Apprentice, or retained in service by the whole year. See *1 Jac. c. 16.*

2. One of the (two) Watermen, rowing together in one Boat, must be allowed by the most part of the Eight Overseers, by writing under their Seal, and must have used rowing there two years before.

3. Water-

P. *Ibid.* 6. 3. Watermen shall not hide themselves in time of pressing for the Kings service, &c.

P. *Ibid.* 7. 4. Watermen shall not take for their Fare and Labor above the prices assessed, &c. And set up in Tables in *Westminster-Hall*, &c. But *Quere* whether the Justice of Peace be to meddle in this. See the Statute at large.

*Wax.* CHAP. CVI. *℞. 62.*

18 H. 6. 12. P. *Wax* 8. R. *Just.* 42. **E**Very Justice of Peace may examine and search (by his discretion) such *§. 1.* as do sell, or set forth to be sold, any Candles, or other works of Wax *Price.* at higher price then after the rate of 4 *d.* the pound, over the common price of plain Wax, between Merchant and Merchant, and may punish them by Forfeiture of the Work or value thereof, and by Fine to the King.

*Wears.* CHAP. CVII.

**E**Very Person that shall erect any new Wear along the Sea-shore, or *§. 1.* "in any Haven, Harbor, or Creek, or within five miles of the *Erecting* Mouth of any Haven or Creek. 3 *Jac.* 12. *Wears.*

"Or shall willingly take, destroy, or spoil any Spawn, Fry, or Brood, *§. 2.* "or any Sea-fish in any Wear, Engine, or Device whatsoever, shall forfeit *Catching* 10 *l.* for every such erecting or spoiling. The one moiety to the King, *Fish with* "the other moiety to the Prosecutor. 3 *Jac.* 12. *them.*

"Any person, which in any Haven, Harbor, Creek, or within five *§. 3.* "miles of the Mouth of any Haven, Harbor, or Creek of the Sea, shall *Unlawful* "Fish with any Draw-net or Drag-net, not three inches Meash, *Nets.* *viz.* An "inch and a half from knot to knot, except for the taking of Swoulds in "Norfolk only; or with any Net with Canvas, or any other Engine or De- "vice, whereby the Spawn, Brood, or Fry of Fish, may be destroyed, "shall forfeit for every Net, and every time so doing 10 *l.* A moiety to the "Poor of the place, &c. the other moiety to the Prosecutor, to be levied "by Warrant of the Major, &c. or one or more Justice of Peace, to the "Constable by Distress and Sale, rendring the overplus, &c. 3 *Jac.* 12.

*Weavers.* CHAP. CVIII.

**N**One using the Trade of Cloth-working living out of a City, *§. 1.* "Borough, Market Town, or Corporate Town, shall keep above *What Looms* "one Loom at one time in his House or Possession, or make profit by let- *they may* "ting or setting a Loom, or of a House wherein a Loom is, and be let *keep.* "with it; upon pain to forfeit for every week 20 *s.* 2 & 3 *Ph. & Ma.* "cap. 11.

"No Woollen Weaver living out of a City, &c. shall keep above "two Looms, or make profit by any other Loom, upon pain to forfeit for "every week 20 *s.*

"None using the Trade of a Weaver, and not Cloth-making, shall "keep a Tucking-mill, or use the Trade of a Tucker, or Fuller, or Dier, "upon pain to lose for every week 20 *s.*

"None using the Trade of a Tucker or Fuller, shall keep or have a "Loom, or make any profit thereby, or forfeit for every week 20 *s.*



- §. 2. *What Apprentices they may take.* "No Woollen Weaver living out of any City, &c. shall take any to be his Apprentice, or instruct any in his Trade, except it be his Son, or the Father or Mother have 3 *l. per annum* in Lands. 5 *Eliz.* 4. And for every three Apprentices, shall keep one Journey-man; and for every Apprentice more, one Journey-man.
- §. 3. "No person shall use the Trade of a Weaver, except he have been an Apprentice, or used the Trade seven years on pain of 20 *l.*
- "Of all which Forfeitures, a moiety to the Queen, and the other moiety to the Prosecutor, in any Court of Record, by Action, &c. or Information. 2 & 3 *Ph. & Ma.* 11.

## Wine. CHAP. CIX. v. 63.

- §. 1. *What Ap- prentices they may take.* **E**very Justice of Peace (as it seemeth by the words of the Statute) <sup>24 H. 6 P. Wine</sup> within the precinct of his Office (at the request of any Subject, to whom denial of Sale shall be made of any Wine, and full payment therefore offered according to the prices set down by the Lords, &c.) may enter into the places where such Wine shall lie, and may sell and deliver the same Wine desired to be bought, to the person requiring to buy the same, taking the Buyers Money towards the satisfaction of the Forfeiture, &c.
- §. 2. *Licenses.* "Note, That no person may sell any Wine in any Town not Corporate, but by the Licence of the Justices of Peace in open Sessions by writing under the several Seals of every of the said Justices, upon pain of 5 *l.* for every day of so offending. 7 *E. 6. cap. 5. Co. lib. Entr. fol. 370.* *Finches Case*, who recovered 550 *l.* in an Information upon this Statute, notwithstanding the Queens Licence there, pleaded in Bar of the said Action.
- "And by the Statute in Towns Corporate, no person to Seal but by Licence of the Major, Aldermen, &c. And that under the common Seal of the Corporation upon the same penalty. *Quod nota.*
- "But now touching Wine Licenses. See the Statute of 12 *Car. 2. cap. 25.*
- §. 3. *Extortion.* "No Officers to be appointed by His Majesty, for carrying on the duty of Wine Licenses by the Statute of 12 *Car. 2. c. 25.* shall demand <sup>11 Car. 1 c. 25</sup> or receive any Fees, or Rewards, or sums of Money for, or in respect of his service, other then 5 *s.* for a License, 4 *d.* for an Acquittance, and 6 *d.* for a Bond, under the penalty of 10 *l.* A moiety to the King, the other moiety to the Prosecutor, by Debt, Bill, Plaint, or Information, wherein no wager, &c. *Quere*, An Information lying in a Sessions, if the Suit may not be prosecuted there by this Statute.
- §. 4. *Mingling or Corrupting.* "No Person Selling or Retailing Wine, shall mingle or utter any <sup>11 Car. 1 c. 25</sup> Spanish Wine, mingled with French or Rhenish Wine, Sider, Perry, Honey, Sugar, Sirrups of Sugar, or Molasses, or any Sirrups; nor put in any Isinglass, Brimstone, Lime, Raisins, Juice of Raisins, Water, or any other liquor or ingredient; or Clary, or other Herb, or any Flesh; Nor any such Person, shall mingle or utter any French Wines mingled with Rhenish or Spanish Wines, Sider, Perry, Stummed Wine, Vitriol, Honey, &c. And that no such person shall mingle or utter any Rhenish Wines mingled with French or Spanish Wines, Sider, &c. shall forfeit, *viz.* Every person selling Wine in gross, mingled or abused as aforesaid, shall forfeit for every such offence 100 *l.* And every Retailer for every offence, shall forfeit 40 *l.* A moiety to the King, the other moiety to the

" the Informer, to be recovered in any Court of Record, by Action of Debt, Bill, Plaint, or Information, whereon, &c.

11. Car. 2. " No Canary Wines, Muskadel or Allegant, or other Spanish, or §. 5.  
c. 25. " sweet Wines, shall be sold by retail at above 18 d. per Quart. No Gas- Prices and  
" coign or French Wines at above 8 d. per Quart. No Rhenish Wines at Penalty.  
" above 12 d. per Quart. And so for lesser or greater quantities, upon  
" pain to forfeit for every Pint, Quart, Pottle, Gallon, or greater or lesser  
" measure 5 l. A moiety to the King, the other moiety to the Prosecutor,  
" to be recovered as aforesaid.

## Wild Fowl. CHAP. CX.

25 H. 8. " NO Person shall between the last day of May, and the last day of §. 1.  
11. " August, take or cause, &c. any Wild Fowl, as Ducks, Mal- At what  
" lards, Widgeons, Teals, Wild Geese, or other kinds of Wild Fowl, time not to  
" with Nets or other Engines, upon pain of a years imprisonment, and to be taken.  
" pay 4 d. for every one so taken.

25 H. 8. " The Justices of Peace have power to hear and determine the offen- §. 2.  
11. " ces aforesaid. As in Cases of Trespass.

25 H. 8. " A Gentleman that may dispend 40 s. per annum of Freehold, may  
11. " Hunt them with Spaniels only, or the Long Bow.

25 H. 8. " From the last day of March, to the last day of June, in every year, §. 3.  
11. " none shall take, or convey, or destroy any Eggs of Wild Fowl from the Eggs.

3 & 4 E. 6. " place they are laid by the Wild Fowl, upon pain of imprisonment for  
7. " a year, and to lose for every Egg of a Crane, or Bustard, 20 d. And for  
" the Egg of a Bitton, Heron, or Shovelar, 8 d. And of a Mallard, Teal, or  
" other Wild Fowl, 1 d.

" The part of the Statute of 25 H. 8. 11. touching taking of Wild  
" Fowl, was Repealed by 3 & 4 E. 6. 7. But is again Revived by 21 Jac. 28.  
" Which is Continued by 3 Car. 1. 4. & 17 Car. 1. 4. And so is in Force at  
" this day.

## Wood. CHAP. CXI. V. 62.

35 H. 8. " Two Justices of Peace (not being of Kinred, Alliance, Counsel, or §. 1.  
17. " Fee to the Lord, or Owner of a Wood) appointed by the more part  
13 El. 26. of the Justices of Peace at their Sessions, upon complaint of the Lord made  
p. 4, 9. unto them, may divide and set out the Fourth part of the Wood, if the  
" Lord and Commoners thereof (being first called before them) cannot  
" agree upon it.

" Whereas the Statute of 43 Eliz. doth not sufficiently prevent nor §. 2.  
" punish the Cutting and Spoiling of Woods, by this Statute, it is Enacted, Cutting  
" That every Constable, and other Person in every County, City, or other woods

15 Car. 2. " place, where they shall be Officers or Inhabitants, shall, and may appre-  
cap. 2. hend, or cause to be apprehended, every person they shall suspect having,  
Stat. 3. " carrying, or conveying, any Burden, or Bundle of Wood, Poles, young  
" Trees, Bark, Bait of Trees, Gates, Stiles, Posts, Pales, Rails, or Hedgwood,  
" Broom, or Furzes. See tit. Trespass. And by Warrant under the Hand  
" and Seal of any one Justice, directed to any Officer, he may enter into,  
" and search the Houses, Yards, Gardens, and other places belonging to the  
" Houses of any Persons, they shall suspect to have Trees aforesaid; and  
" finding any such Wood, &c. to apprehend the Persons suspected for cut-  
" ting

‘ting or taking the same, and as well such persons apprehended or taken  
 ‘carrying any kind of Wood, or other Premises, as those in whose houses,  
 ‘or other places belonging to them, any of the same shall be found, to  
 ‘carry before any one Justice of the Peace of the same County, City, or  
 ‘Town Corporate. And if such persons suspected, do not give a good ac-  
 ‘compt how they came by the same, by the consent of the owner, such as  
 ‘shall satisfy the said Justice (or within some convenient time to be set by  
 ‘the said Justice) produce the party of whom they bought the said Wood,  
 ‘or some credible witness upon Oath, to prove such sale, then such per-  
 ‘sons suspected, not giving such good accompt, not producing such witness,  
 ‘shall be judged as convicted, for cutting and stealing of Woods, Under-  
 ‘woods, Poles, Trees, Gates, Stiles, Posts, Pales, Rails, Hedgwood, Broom,  
 ‘or Furze, within the meaning of the said Statute of 43 Eliz. and liable to  
 ‘the punishment therein, and of this Act: *Viz.*

§. 3.  
*Penalty.*

‘Every Person so convicted, shall for the first offence give the owner  
 ‘satisfaction for his damages within such time as the Justice shall appoint,  
 ‘and over and above, pay down to the Overseers of the Poor of the Parish  
 ‘where such offence is, such sum of Money, not exceeding 10s. as the  
 ‘said Justice shall think fit: In default of either of which Payments, the  
 ‘said Justice may commit such offender to the House of Correction, for  
 ‘such time (not exceeding one Moneth) as he shall think fit, or to be whipt  
 ‘by the Constable, or other Officer, as in his judgment shall seem ex-  
 ‘pedient.

‘And if such Person shall again commit the said offence, and be there-  
 ‘of convicted as before, that then the Persons offending the second time,  
 ‘and convicted, shall be sent to the House of Correction for one moneth,  
 ‘and there to be kept to hard labor: And for the third offence, convicted  
 ‘as before, shall be judged and deemed as incorrigible Rogues.

§. 4.  
*Buying.*

‘And whosoever shall buy any burdens of Wood, or any the premises,  
 ‘suspected to be stolen, or unlawfully come by, the Justices, the Major, or  
 ‘chief Officer, or any one of them within their respective Jurisdictions,  
 ‘upon complaint, may examine the matter upon oath: And if they find the  
 ‘same was bought of any suspected to have stolen or unlawfully come by  
 ‘the same, then any one of the said Justices or chief Officer, shall and may  
 ‘Award the party that bought the same, to pay treble the value thereof  
 ‘to the party from whom the same was stolen, or unlawfully taken: And,  
 ‘in default of present payment, to issue forth Warrant to levy the same by  
 ‘Distress and Sale of the offenders Goods, rendering the overplus to the  
 ‘party: And for want of such Distress, to commit the party to the Gaol,  
 ‘at his own will, there to remain one moneth without Bail.

‘But no Person is to be questioned for any offence within this Act, un-  
 ‘less within six weeks after the offence committed; nor if punished by any  
 ‘former Law for the same.

“*Quere*, If no Owner can claim the Wood as his own, then it seems,  
 “although the same be suspected to be stolen, no proceedings can be on this  
 “Act.

§. 5.  
*Standels.*

“Every owner of Coppice-wood (of Twenty four years growth, or 33  
 “under) for Inheritance, Life, Copihold, or for years, shall leave standing  
 “for every Acre, Twelve Standels or Storers of Oak; if so many of Oak,  
 “if not to be made up of Elm, Ash, Asp, or Beach, to be left of those that  
 “were left standing at the last Felling; if so many, if not, of others, likely  
 “to be Timber Trees, which Storers shall not be cut till they be ten inches  
 “square, within three foot of the Ground, upon pain of 3 s. 4 d. for not  
 “leaving, and 3 s. 4 d. for the owner commanding to cut down. A  
 “moiety



“ moiety to the King, the other to the Prosecutor, by Action, &c. or Information in any Court of Record.

35 H. 8. 17. “ All Coppice and Underwoods that shall be felled at fourteen years growth, or under, from the Twentieth day of April next, after the Felling for four years, it shall be sufficiently Inclosed, and the Springs preserved from Cattle, by him that hath the lawful Interest and Possession, upon pain to forfeit 3 s. 4 d. for every Rod, not so Inclosed or Preserved by the Person so bounden to it for every moneth. This is enlarged to five years, and then none but Calves, and yearling Colts till six years. §. 6. Inclosure.

13 El. 25. “ All Coppice above fourteen years growth, and under twenty four, shall in like sort be Inclosed or Preserved for six years, under the like penalty; and this is enlarged to eight years, as above.

35 H. 8. 17. “ No Person shall convert into Tillage or Pasture any Coppice or Underwoods, containing two Acres or more, being then Coppice or Underwood, and being two furlongs distant from the owners house, or the house to which it appertains, upon pain to forfeit for every Acre 40 s. §. 7. Altering.

“ Every Person having several Woods or Coppice set with great Trees above twenty four years growth, shall at the Felling, leave for every Acre twelve Oaks, if so many Oaks, or else so many Trees of Elm; Alb, Asp, or Beech, as make up the number to be left standing, twenty years after the Felling; and for seven years after, Preserve and Inclose it from destruction by Cattle, upon pain, that the owner forfeit for every Tree lacking of that number 6 s. 8 d. And the owner commanding those Trees to be felled, to lose for every Tree so felled 6 s. 8 d. And for every Rod Inclosed or Preserved 3 s. 4 d. §. 8. Standels. Inclosure.

“ But the owner may take any of them for Repairs and Necessaries.

35 H. 8. 17. “ The Lord, owner of the Soil, where Woods grow, and others having Common, shall before Felling, call together the Tenants, and by the consent of more part of them, if they can agree, shall set out a fourth part thereof: And if the Lord and Tenants do not agree, then two Justices to be assigned by the Sessions, at the request of the Lord, being not of his Alliance, Kin, Council, or Fee, shall call together twelve such Commoners and Inhabitants, and under such penalties as they think fit; and being met, and the Justices shewing the cause of their meeting, if the Justices, Lord, Commoners, and Inhabitants, or the major part of them cannot agree upon a Division of a fourth part, the Justices may set out a fourth part; and the Lord, or owner, may Inclose and Fell. §. 9. Commoners.

35 H. 8. 17. “ Standels, Storers, and Trees, shall be left upon like penalties, as before is limited, and the Inclosure maintained, and Springs preserved seven years from the Felling; and within that seven years, no Beast be put in or suffered to feed there, upon pain to forfeit 4 d. for every Beast. And the owner forfeit for every Tree otherwise felled 6 s. 8 d. §. 10. Standels.

“ After such Inclosing, the Tenants may use and enjoy their Common, in the residue not Inclosed; and the Lord shall put no Cattle therein for the seven years. 35 H. 8. 17. And after the seven years, it shall be left open, and used as before. Preservation.

“ But by 13 El. 25. the Woods are to remain Inclosed, and Springs be Preserved two years longer then by 35 H. 8. is directed upon the like penalties.

35 H. 8. 17. “ No Person shall fell or cause, &c. any Oaken Trees, meet to be Barked (where Bark is worth two shillings a Cart-load above the charges) except Timber for Houses, Ships, or Mills; but between the first day of April, and the last day of June, upon pain of Forfeiture of the Bark, or double the value thereof. §. 11. Bark.

- §. 12. "No Person shall convert, or imploy, or cause, &c. to Coal, or other  
*Felling for* "Fewel, for the making of Iron, or Iron metal in any Iron Mills, Fur-  
*Iron works.* "nace, or Hammer any manner of Wood or Underwood, growing within  
 "twenty two miles about the City of London, or Suburbs; or within  
 "twenty two miles of the River of Thames, from Dorchester, in the County  
 "of Oxford, downwards; nor within four miles of the foot of the Downs,  
 "betwixt Arundel and Pevensey; nor within four miles of Winchelsey, or  
 "Rye; nor within two miles of Pevensey, or within three miles of Hastings,  
 "upon pain to forfeit for every Load 40 s.  
 "No new works shall be set up within those distances, upon pain to  
 "forfeit 100 l.  
 "A moiety whereof to the Queen, the other moiety to the Informer,  
 "by Action, &c. or Information in any Court of Record, &c.
- §. 13. "The Assize of Tale-wood, Billet, Faggots, and the ordering there-  
 "of, and the penalties therein. 43 Eliz. 14.

## Weights and Measures. CHAP. CXII. V. 65.

§. 1. *Two Justices.* **T**WO Justices of Peace (one being of the *Quorum*) may by examina-  
 tion or inquiry, hear and determine the faults of Head-officers in  
 Cities, Boroughs, and Market Towns, that do not twice every year view  
 and examine all Weights and Measures in their Towns, &c. And do not  
 break and burn the defective.

Also two such Justices may by examination or inquiry, hear and deter-  
 mine the faults of all Buyers and Sellers, which do not buy and sell with  
 Weights and Measures that be lawful, *sc.* with such as be Marked and Seal-  
 ed, *sc.* 'in Market Towns', (like and equal with the Kings Standard, *sc.*  
 'out of Market Towns.' *Quere*) Also the said Justices may break and burn  
 all defective Weights and Measures. *See hic postea.*

The said Justices may fine all and every the offenders aforesaid by their  
 discretion, and may make Process against them, as if they were indicted of  
 Trespas against the Peace. For the Process, see hereof in the title *Process*.

§. 2. *False weights.* "Majors, Bailiffs, and Head-officers of Cities, Boroughs, and Market  
 "Towns, shall cause twice a year, or oftner, as they think fit, all Weights  
 "and Measures there to be brought before them; and such, as upon view  
 "and examination, they shall find defective, to break and burn; and the  
 "parties which have offended, and be found defective, shall for the first  
 "offence forfeit 6 s. 8 d. for the second 13 s. 4 d. and for the third 20 s. to  
 "the Major, Bailiff, or other having Jurisdiction, and correction; and for  
 "further punishment, to beset on the Pillory. 11 H. 7. 4.

Now for the readier direction of the Justices of the Peace herein, I  
 thought good to set down the just and certain contents of all (or most sorts  
 of) Weights and Measures, that so they may the better judge what Weights  
 and Measures be unlawful, or defective, and what not.

*Vera fides, pondus, mensura, moneta sit una. Ac status illiusque totius orbis erit.*  
 By the Statute of *Magna Charta*, c. 25. there shall be but one Weight  
 and one Measure of Corn, Wine, Beer, and Ale; and one Yard throughout  
 the whole Realm, (*sc.* according to the Kings Standard in the *Exchequer*.)  
 And this Statute of *Magna Charta*, hath since herein been confirmed by many  
 several Parliaments, *viz.* By the Statutes of 14 Ed. 3. 12. 25 Ed. 3. 10.  
 27 Ed. 3. 10. 34 Ed. 3. 5. 13 Ric. 2. 9. 8 H. 6. 5. 7 H. 7. 4. 11 H. 7. 4. &  
 12 H. 7. 5. as thereby appeareth.

"There shall be one Weight, one Measure, and one Yard, according to  
 "the Standard of the *Exchequer*, throughout all the Realm, as well in places  
 "Priviledged

“Priviledged as without, and every Measure of Corn shall be striked without heap: And whosoever shall keep any other Weight, Measure, or Yard, whereby any Corn, Grain, or other thing is bought or sold, shall forfeit for every offence five shillings, being thereof convicted, by the Oath of one sufficient witness, before any Justice of Peace, or Head-officer of City, Town, or place where the offence is done, to be levied by the Church-wardens or Overseers of the Poor of the Parish, to the use of the Poor of the said Parish, by Distress and Sale of the offenders Goods, and for want of Distress, to be imprisoned without Bail until payment. And any Justice of Peace, upon Suit against him, for any thing done upon this Act, to plead the General Issue, and give the Act in Evidence, and to have treble costs, if unjustly vexed.

“Touching the Clerk of the Market, his duty follows.

“The Clerk of the Market of the Kings Household, and of the Duke of Cornwall, shall execute their Offices only within the verge of the Kings House, and no where else. And all Majors, and Head-officers of Towns, Lords of Liberties, according to their Liberties and Jurisdictions, may execute their Offices accordingly. 17 Car. 1. c. 19. §. 3. Jurisdiction.

“If any Clerk of the Market shall seal or allow any Weights or Measures, other then according to the Standard in the Exchequer, or shall refuse to allow such as are according to it, paying only such Fees, as by Statute or Custom are allowed, they, their Deputies, or Agents, shall forfeit 5 l. to be levied as aforesaid. §. 4. Standard.

“If any Clerk of the Market of the Kings Household, or others, having power to execute that office, shall take, by colour of his office, any Fines or Fees, other then such as are allowed by Statute or Custom, or shall take any Fine, Fee, Reward, or consideration, for making, signing, or examination of any Weights or Measures, formerly marked or sealed; or shall set any Fine or Amerciament, without legal tryal of the offence, or otherwise misdemean himself in his office, and be convicted, shall for the first offence forfeit 5 l. for the second 10 l. for the third, and every other offence 20 l. To be levied as aforesaid to the use of the Poor. 17 Car. 1. c. 19. §. 5. Extortion.

“The Measure called *Water Measure*, is thereby continued where the same was then used. But by 22 Car. 2. the same Clause, as to the Mesuring of Corn and Salt, is Repealed. §. 6. Water Measure. Corn, Salt.

“If any Person sell Corn or Grain, ground or unground, or Salt, by any other Bushel then *Winchester Measure*, containing Eight Gallons stricken by the brim, and sealed, shall forfeiture 40 s. to be levied, as by the Act of 17 Car. 1. is directed, 22 Car. 2.

“If any Major or Head-officer, wilfully permit any Person to sell, by any other Measure then as aforesaid; or upon complaint, shall not punish the breach of that Statute, shall upon conviction by Presentment or Indictment at the General Quarter Sessions of the County, forfeit 5 l. One moiety to the Informer, the other moiety to the Poor, to be levied by Distress and Sale; and for want of Distress, Imprisonment until payment. 22 Car. 2. §. 7. Neglect to punish.

“If any Clerk of the Market, shall neglect or refuse to seal or mark any Bushell, half Bushel, or Peck, duly gaged, he shall forfeit for the first offence 5 l. for the second, and every other offence 10 l. to be levied as aforesaid. 22 Car. 2. Refusal to Seal.

“If the Clerk of the Market of the Kings House, within the verge, shall take more then the lawful and accustomed Fees; or if any other shall take above one penny for the Sealing and Marking a Bushel, a half penny for a Half- §. 8. Fee.



"Half-bushel or Peck; and a farthing for a Gallon, Pottle, Quart, Pint, or  
 "Half-pint, upon due proof, and conviction, shall incur the penalties in  
 "17 Car. 2. c. 19. 22 Car. 2.

§. 9.  
*Providing  
 Measure.*

"At the charge of such Person as hath the Toll and Profit of the  
 "Market, before the twenty ninth of September, 1670. shall be provided  
 "one Measure of Brass, and chained in the Market place, or else forfeit  
 "5 l. to be recovered as by that Act is directed. One moiety to the Poor,  
 "the other to him that sues. 22 Car. 2.

§. 10.  
*Search.*

"Every Constable shall search if any use any other Measure, or shall  
 "strike the same, otherwise then that Act directs, or buy or sell by unsealed  
 "Measures; and if he find any unsealed, to break it, and to present those  
 "offences to the next private or quarterly Sessions. 22 Car. 2.

§. 11.  
*Forfeiture.*

"None shall buy Corn or Salt by the Bag, or Unmeasured, being there-  
 "unto required, or in any other manner then is by the Act of 22 Car. di-  
 "rected, and that without shaking the Bushel; or if he do, shall besides  
 "the penalties in the former Act, forfeit the Corn or Salt so sold, or the  
 "value thereof to the Persons complaining 22 & 23 Car.

§. 12.  
*Proof.*

"Upon complaint to any Justice that any Corn or Salt is sold contrary  
 "to the Act, the Defendant must make it appear by one witness, that he  
 "bought the same according to that Act, or else to forfeit, as by the for-  
 "mer Act is directed, to be levied by Distress and Sale, *prout*. One moiety  
 "to the Poor, the other to the Informer. 22 & 23 Car. 2.

*Sealing.*

"Where there is no Clerk of the Market, the Head-officer, or Person  
 "having the profit of the Market, may Seal Measures. 22 & 23 Car. 2.

And yet notwithstanding "the Statutes of *Magna Charta*, c. 25. and *Rast. l.*  
 "the several Confirmations thereof, and the said Statute 17 Car. 1. c. 19. *Dis. fol.*  
 there always hath been, and still are, two kinds of Weights used in *England*, *7. b.*  
 and both warrantable: The one by Law, the other by Custom (as it seemeth)  
 but they are for several sorts of Wares or Commodities; for there is *Troy*  
 weight and *Averdupois*.

§. 13.  
*Sorts of  
 weight.*

"1. *Troy* weight is by Law; and thereby are weighed Gold, Silver, *Ibid.*  
 "Pearl, precious Stones, Silk, Electuaries, Bread, Wheat, and all manner  
 "of Grain or Corn is measured by *Troy* weight. And this hath to the pound  
 "12. ounces, or 20 s. *sterling* weight, and no more. It is called by some,  
 "Libra medica; by others, *Libra & uncia Trojana*.

"2. *Averdupois* weight is by Custom (yet confirmed also by Statute;) *Rast. l.*  
 "and thereby are weighed all kind of Grocery Wares, Physical Drugs, *14.*  
 "Butter, Cheese, Flesh, Wax, Pitch, Tar, Tallow, Wools, Hemp, Flax, *17 L. c.*  
 "Iron, Steel, Lead, and all other Commodities not before named (as it *10.*  
 "seemeth) but especially every thing which beareth the name of Garble,  
 "and whereof issueth a refuse, or waste. See *Rast. 8. fol. 527.* and the Book  
 "of *Affize*, Impres. 1597. This is called *Libra Civilis*.

"The word *Averdupois*, in French, is as much as to say, to have full  
 "weight, *Habere pondus*. *Geo. Agricola* in his Learned *Treatise*, *De ponderi-*  
 "bus & mensuris, pag. 339. saith thus of both these kinds of Weights, *Me-*  
 "dica & civilis libra numero non gravitate unciarum differunt.

And this hath to the pound 16 ounces, or 25 s. *sterling* weight.

Also in this *Averdupois* weight, unto every Hundred is allowed twelve  
 pounds weight; so as One hundred and twelve pounds make a Hundred  
 weight, six and fifty pounds make half a Hundred, and twenty eight  
 pounds make a quarter.

Also all manner of *Averdupois* shall be weighed by lawful Weights, *27 Ed. 3.*  
 sealed according to the Standard of the *Exchequer*, *P. Weights* 14. *10.*

S. 14.  
Compared.

Averdupois Weight.

14 Ounces and a half, and two pence Weight Troy, do make 16 ounces of *Averdupois*.

Measures of  
Corn, ac-  
cording to  
*Averdupois*  
Weight.

7 { Pounds  
or  
Pints } *Averdupois*, make the Gallon.

14 { Pounds  
or  
Pints } *Averdupois*, make the Peck.

56 { Pounds  
or  
Pints } *Averdupois*, make the Bushel.

Troy Weight.

Pints or Pounds,	5120	512	256	64	16	8	4
Quarts,	2560	256	128	32	8	4	2
Pottles,	1280	128	64	16	4	2	1
Gallons,	640	64	32	8	2	1	
Pecks,	320	32	16	4	1		
Bushels,	80	8	2	1			
Coombs,	20	2	1	Ten Quarters.			
Quarters,	10	1	of Corn is a Last.				

Measures  
of Grain,  
according  
to Troy  
Weight.

Beer Measures.								Ale Measures.							
Pints,	288	144	72	8	4	2		256	128	64	8				
Quarts,	144	72	36	4	2	1		128	64	32	4				
Pottles,	72	36	18	2	1			64	32	16	2				
Gallons,	36	18	9	1				32	16	8	1				
Firkins,	4	2	1					4	2	1					
Kilderkins,	2	1						2	1						
Barrel,	1							1							

See for Corn, Beer, and Ale, more fully in that which followeth

	Thirty two Wheat Corns taken in the midst of the Ear,	§. 15.
	weigheth one penny <i>Sterling</i> .	Troy
	Twenty pence <i>Sterling</i> , maketh the ounce <i>Troy</i> .	Weight.
	Twelve ounces maketh in } weight one pound <i>Troy</i> .	Measures
		} measure one Pint.
	Two Pints, or Pounds, maketh the Quart.	
	Two Quarts maketh the Pottle.	
	Eight Pints } maketh the Gallon.	
	Four Quarts }	
	Two Pottles }	
	Eight Quarts maketh the Peck.	
	Sixty four Pints }	
Troy Weight, 12 H. 7. 15. & 51 H. 3.	Thirty two Quarts }	} Bushel or Firkin.
	Eight Gallons }	
	Four Pecks }	
	Sixteen Gallons }	} Kilderkin. Half Barrel. Rondlet.
	Two Firkins }	
	Two hundred fifty six Pints }	
	One hundred twenty eight Quarts }	
	Thirty two Gallons }	} Coomb or Barrel.
	Four Firkins }	
	Two Kilderkins }	
	Four Bushels }	

Troy

Troy Weight,	{	Five hundred and twelve Pints	}	maketh the	{	Quarter
		Two hundred fifty six Quarts				or
		Sixty four Gallons				Hoghead.
		Eight Firkins				
		Four Kilderkins				
		Two Barrels				
		Eight Bushels				

So the { Pint and Pound  
 Firkin and Bushel  
 Barrel and Coomb  
 Hoghead and Quarter } are of like content.

Also the Statute of 23 Hen. 8. cap. 4. doth limit the Weight of every of these three Vessels here next named, being empty, as followeth, *sc.*

- |                                    |                                 |
|------------------------------------|---------------------------------|
| 1. The Barrel                      | { must weigh } { 26 } { Pounds. |
| 2. The Half-Barrel<br>or Kilderkin |                                 |
| 3. The Firkin                      |                                 |
- (being empty) { 13 } { 6 1/2 }

### Measures of Corn.

All kind of Corn and Grain is measured by *Troy* weight.

By Statute, the Bushel must contain Eight Gallons, or Sixty four Pounds or Pints of Wheat, 31 Ed. 1. 12 Hen. 7. 4. *P. Weights. 2 Rastal. 34. Din.*

And yet by the Book of *Affize*, Imprinted *An. Dom. 1597.* the Bushel is to contain Fifty six Pounds (or Pints) of *Averdupois* weight (which is three Pounds, or three Pints and Eight Ounces *Troy*, more then the Statute or *Troy* weight.) For Fifty six Pounds or Pints *Averdupois* weight, and Sixty seven Pounds Eight Ounces *Troy* weight do justly agree. *See the Book of Affize.*

Also Eight Bushels stricken, make the Quarter of Corn, 11 Hen. 7. 4. *P. 3. 15 Ed. 4. P. 1. 25 Ed. 3. 10. & 34 Ed. 3. 6.*

Also every Measure of Corn shall be stricken without heap, 25 Ed. 3. 10. And all Purveyances shall be by such measure, *sc.* stricken without heap. *Ibid.*

Water measure, sold within Ship-board, shall contain five Pecks stricken to the Bushel. *P. 3.*

No Person shall buy or sell with a Bushel, except it be sealed, and marked by the Officer, and according to the Kings Standard. *P. 33.*

But note, that in many Places and Countreys the measure of Corn doth much differ, and the Bushel in one place is greater then in another.

And yet in the Measure of Corn *Consuetudo loci est observanda*, if it be a Custom exceeding all memory, and used without any lawful Interruption; for such time and usage sufficeth for a Law, though regularly Custom or Prescription against a Statute, is not good, except that such Customs and Prescriptions be also confirmed by Statute, or that they be saved by another Statute. See *Br. Presc. 2. 50. Pl. 36. b. & 8 H. 7. fol. 4. b. Dr. & Stud. 47.* *9 H. 4. 4. 30 Aff. 15. 38. Co. lib. 113, 114.*

Bushel.  
 Several  
 Clerks of  
 the Markets  
 cause the  
 diversity of  
 measures.

But this difference of Measure of Corn, should seem to come partly from the diversity of Clerks of the Market (there being a Clerk of the Market for the Kings House, another for the Prince, another for the Dutchy; others in Corporate Towns, and others belonging to Lords of Liberties) and



and partly from the abuse of divers Corporate Towns, and other Priviledged Places or Liberties, where they by usurped Custom (without any good warrant of Law) have used to have, and to buy by such Measures. And where the Clerk of the Market for the King, hath forborn or neglected to meddle, in regard perhaps of their Corporation, Liberty, or some other respect. But this abuse two Justices of Peace (the one being of the *Quorum*) may reform, *sc.* Two Justices of Peace of the County, where there be no Justices of Peace within that Corporation, &c.

Also the Clerk of the Market for the Kings House, may reform this in all places within the Verge. 27 H. 8. c. 24.

And yet by the words of the Statutes of 25 E. 3. c. 10. & 34 E. 3. c. 6. the Rents and Firms of Lords, shall be measured by such Measures as they were wont to be, whether it were by heaped Measure, or greater Measure than the Statute appointeth.

And note, That the Clerk of the Market shall carry with him all his Weights and Measures signed according to the Standard of the *Exchequer*, 16 Ric. 2. c. 3. And the Justices of Peace may, yea, ought, for to sit with the Clerk of the Market at his coming into the Countrey, &c.

Sir Francis Harvey hath often delivered in his charge at Cambridge Assizes, these directions, *sc.* That one Justice of Peace at the least, ought to sit with the Clerk of the Market, to see that the Kings Subjects be not wronged. And that the Clerk of the Market ought to have with him his directions out of the *Exchequer*. And that he may take no Money for any Bills, &c. And that he ought to Seal no Bushel, or other Measures or Weights, but once (and not yearly as they use to do:) And that if after the first sealing, he shall take any thing for the sealing thereof again, or for the shewing thereof, &c. it is Extortion; yea, it is one of the greatest oppressions (saith he) for that it concerneth almost all Men.

"It was resolved *Nemine contradicente* by all the Justices. M. 39 & 40 El. That if the Clerk of the Market claim Fees for examining and "seeing any Bushels, or other things before sealed, the same was a great "Extortion, and no Fee is due unto him; therefore, for such seeing and "examining is to no other end, then to find and discover abuses in Weights "and Measures: And those that they find false, their duty is to dampn, "and reform them, and upon lawful Presentments, to punish the offenders "by Amerciaments, which belong to the King. And this agrees with the "Statute of 13 R. 2. c. 4. And if such use hath been through Covetous- "ness or Greediness of corrupt Officers, that use may not make a Law. "Which Case you may see *Moor, Rep. p. 523.*

"The Clerk of the Market his duty is, to take charge of the Kings Measures, and to keep the Standard of them, that is, the Examples and Patterns "of all the Measures that ought to be throughout the Realm, as of Ells, "Yards, Quarts, Pottles, Gallons, &c. Of Weights, Bushels, and such like, "and to see that all Measures in every place be answerable to the said Standard or Pattern, *Flet. l. 1. cap. 8, 9, &c.* And he is to have with him, when "he goeth to assay, Weights and Measures signed according to the Standard, "and none other his Weights and Measures, 16 R. 2. c. 3.

For the Assize of Bread, I refer you to the Books made for the Assize thereof, and will only set you down some short Observations therein. §. 18.

1. All sorts of Bread ought to be weighed by *Troy* weight.

2. *Post septem dies, panis non ponderetur.*

3. The Bakers shall not sell to any Victualler, &c. to be retailed, but only thirteen penny worth for twelve pence, as well Mans Bread as Horse Bread.

4. Every

§. 17.  
Clerk of the  
Market his  
office.

Bread.

4. Every Baker shall have a mark of his own for his Bread, *Poulton Statutes at large, p. 111. & Rast. Weights 7.*

5. Every sort of Bread shall be weighed according to the price of the middle sort of Corn.

6. No Man shall be a common Baker, except he that hath been an Apprentice to that Trade by the space of seven years at the least.

7. The Statute doth appoint three sorts of Bread to be made and sold to the Subjects, *viz.* White-bread, Wheaten, and Household-bread, besides the Horse-bread.

8. The Bakers of Cities, Boroughs, and Corporate Towns, shall have 6 s. allowance for the Baking of every Quarter of Wheat, over and above the second price of Wheat in the Market.

9. Bakers inhabiting out of Cities, Boroughs, and Corporate Towns, shall have 4 s. in allowance for their charges in Baking of every Quarter, &c.

10. But Foreigners Bread should weigh six ounces in the Penny Loaf, more than the Town dwellers, for that they bear not such scot and lot as the others do.

11. Lastly, for Horse-bread, that three Horse Loaves be sold by the Baker for a penny, 13 d. for 12 d. and every Loaf to weigh the full weight of a penny White Loaf, at what price soever the Wheat be sold.

§. 19.  
Bakers and  
their pu-  
nishment.

For the punishment of the Bakers for their unlawful Bread. *Quere,* Whether they shall only be amerced, &c. after Indictment and Conviction of their said offence; or that the Justices of Peace (or sworn Officers in Leets) may take away their unlawful Bread, and give it among the Poor, as Officers in Corporate Towns are inabled or appointed to do, in the end of the Book of Assize, Imprinted Anno 1597. And all Justices of the Peace are there willed and required to be aiding and assisting to the said Officers therein. But by the Statutes of 51 H. 3. & 13 R. 2. 8. Bakers and Brewers being convict for not observing the Assize the first, second, and third time, they shall be amerced according to the offence (if it be not grievous.) But if the offence be grievous, or often, then shall they suffer punishment of the Body, without Redemption (or remitting of the offence either for Gold or Silver) *sc.* A Baker to the Pillory, and the Brewer to the Tumbrel (now called *The Cucking-stool*, as it seemeth by Mr. Lamb. 62. 'Minsh. taketh Tumbrel for a Dung-Cart) or to some other correction. See another Statute concerning Bakers and Brewers, and their punishments, and to the same effect, made *incerto tempore*, c. 2. & 6. *Poulst. Statutes at large, fol. 111.*

'All Procefs and proceedings upon Indictments preferred of Bakers for breach of Assize of Bread were staid, for that it was doubted, whether this Court hath Jurisdiction to inquire, hear, and determine the said offence. *Ord. seff. Pa. Middlesex, 6 Dec. 7 Car.*

Note, that within every Leet or Market, there ought to be a Pillory, and a Tumbrel, to punish the Bakers and Brewers that offend, &c. *Fitz. Leet. 12.* And for want thereof, the Lord of such Leet, or Market, shall make a Fine to the King, *Cro. 149.*

Also they which have the keeping and correction of the Assize of Bread and Beer, if they have not a Pillory and a Tumbrel to punish Bakers and Brewers that are faulty, they shall forfeit their Franchise, *Cro. 148.*

Also a Leet may be seised into the Kings hands, if the Steward there shall take Money to spare the punishment of the Tumbrel, where one shall offend in the Assize of Bread or Ale. *Libr. Intr. Cromp. 181.*

The Millers Toll-dish also must be according to the Standard.

Now

Now Millers are to take for the Toll but the twentieth part, or 24 part, *§. 20:* according to the strength of their Water, and custom of the Realm, *stat. Millers.*

*3 E. 1. de viduariis Rast. tit. Weights Din. 7.*

And yet in some places the Millers do claim and take the 16 part; and where the Custom hath been so used time out of mind, it seemeth good and warrantable; *tamen quere.*

But the Miller ought to take but one quart, for grinding of one bushel of hard Corn, and if he fetch and carry back the grist to the Owner, he may take two quarts of hard Corn; and this hard Corn is intended of Wheat, Rye, Mestin (which is Wheat and Rye mixed.) And for Malt, the Miller shall take but half so much Toll as he taketh for hard Corn, (*sc.* one pint in the bushel) for that Malt is more easily ground then Wheat, or Rye: but if the Miller do fetch to his Mill, and carry back the Malt to the Owners house, then the Miller also shall have double Toll. See *Crompt. author. des Courts, 221. & 224.*

Note, that Millers are not to be Common buyers of any Corn, to sell the same again, either in Corn or Meal: But ought only to serve for the grinding of Corn that shall be brought to their Mills.

*Measures of Wine, Beer, and Ale, &c.*

*11 H. 6. 17.  
P. wine 13.  
1 R. 3. 13.*

Wine,	} their mea- sure is all one, <i>sc.</i> the	Rondlet, 16 and di.	} Gallons.
Oyl, and		Barrel, 32 and di.	
Honey,		Hogshead, 63	
		Pipe, 126	
		Tunn, 252	

*§. 21:  
Measures  
of Liquids.*

Yet for honey the Assize is altered to 32 Wine gallons the Barrel, 16 gallons the Kilderkin, &c. *23 EL. 8. P. Wax, 6.*

*23 H. 8. 4.  
P. Coop. 2.*

Beer, the measure thereof, *sc.* the  
is as followeth, *sc.* the

Firkin, 9.	} Gallons.
Kilderkin, 18	
Barrel, 36	

And so Beer-measure containeth in the Barrel four gallons more than Wine, or any other Vessel.

Ale, the measure thereof, *sc.* the  
is as followeth, *sc.* the

Firkin, 8	} Gallons.
Kilderkin, 16	
Barrel, 32	

No Cooper shall make any other Vessel for Beer or Ale, to be sold with-*§. 22:* in this Realm, of any greater or lesser number of gallons than is afore-*Coopers.* said; unless he shall cause to be marked upon every such Vessel (of greater or lesser number of gallons) the true and certain number how many gallons every such other Vessel shall contain, *23 H. 8. c. 4.*

Also no Brewer of Beer or Ale shall put the Beer or Ale to sale, to be spent within this Realm, in any other Barrels, Kilderkins, Firkins, or other Vessels of Wood, other then shall be marked by a Cooper, and whereof every Vessel shall contain and hold the number of gallons abovesaid, of full and just measure, or above and not under that measure; *ibid.*

The Wardens of Coopers in all Cities, and Boroughs where there be such Wardens, and in all other Boroughs and Towns, the Mayor, Sheriffs, Bayliffs, Constaibles, or other head Officers, may search and gage all such Vessels (made in such City or Town) whether they bear their true contents, as abovesaid; and if they find any Vessel defective, they may mark or amend the same, according to the true content, or else may cause the same to be burned, *ibid.*



It appeareth by *M. Crompt.* that it was agreed by the Justices, that the measure of Wine and Ale should be all one, but now by the stat. of 1. Jac. <sup>Crompt. 94. b. P. Aleh.</sup> c. 9. Ale and Beer shall be sold by retail by one and the same measure, *sc.* by the Ale quart.

§. 23. <sup>Vessels.</sup> And for the prices of all Vessels of Ale and Beer, by the stat. 23 H. 8. c. 4. two Justices of Peace might assess the prices thereof, and that no Brewer shall take for any Barrel, Kilderkin, or Firkin, &c. of Ale or Beer, but after such prices and rates as shall be assessed by the said Justices of Peace in the Country, or by the Mayor, or their Head-Officers in corporate Towns, &c. But now by the Stat. 8 El. c. 9. the assessment of the prices thereof by the Justices shall be by the Just. or the more part of them, being present at the Easter Quarter-Sessions, and only of such Vessels as shall be made or sold out of Cities or Corporate Towns.

§. 24. <sup>Sops.</sup> Sope, the Barrel, half Barrel, and Firkin, shall be of the same content that Ale is, *sc.* the Barrel 32 gallons or above, and the empty Vessel not to be in weight above 26 pound; the empty Firkin not to weigh above 6 pound and an half, and to contain 8 gallons or above, of full and just measure. <sup>23 H. 8. 4. P. Sope.</sup>

<sup>Butter.</sup> Butter also shall be of the same measure that Sope is of. See before *tit.* Butter, and the Statute of 14 Ca. 2. c. 26.

<sup>Cheese.</sup> Cheese, a weigh of Cheese must contain 32 cloves, and every clove 8 l. of Averdupois weight: although the Statute 9 H. 6. 8. *Rast.* 28. *dim.* and the Book of Assize, imprinted 1597, seem to make 7 l. to be a clove. And yet by the Book of Assize, the weigh of *snuffolk* Cheese must contain 256 l. or 12 score and 16 l. of Averdupois weight (and their barrel of Butter is of like weight with the first: ) but the weigh of *Essex* Cheese or Butter is 300 l. weight, after the rate of five-score and 12 l. to the hundred, which is 336 l. or 16 score and 16 pounds of Averdupois weight. <sup>P. weight.</sup>

<sup>Flesh.</sup> Beef, and other flesh are 16 ounces Averdupois to the pound, and eight of them pounds to make the stone, except where the usage of the Country require more pounds to the stone, *Book of Assize.*

<sup>Fish.</sup> Herrings the barrel, half barrel, and firkin shall be the same content that Ale is, *sc.* the barrel 32 gallons, &c. 11 H. 7. c. 23. and 13 El. 11. P. Fish. 9.

Also herrings are sold by tale, *sc.* six-score herrings shall go to the hundred, ten hundred to the thousand, and ten thousand to the last, 31 E. 3. c. 2.

Salmon and Eels, see the contents of their Vessels, Stat. 11 H. 7. c. 23. P. Fish. 8. 10.

<sup>Wool.</sup> Wool; 14 pound weight goeth to the stone of Wool, 28 pounds goeth to the Tod, and 26 stone goeth to the Sack, 11 H. 7. 4. P. 3. 31 Ed. 13. cap. 8.

Hemp, 20 l. weight maketh the stone, P. Cables 2. 21 H. 8. c. 12.

Sugar, spices and wax 8 l. maketh the stone, and 13 stone and a half, or 100 l. maketh the hundred: see the stat. *de composis. ponder. Rastal, weights* 8.

Hops, five-score and twelve pounds maketh the hundred.

Lead, the content of the pound, the stone, and the load; see *Rastal, weights* 8.

Leather, the content of the Dicker, and the Last; see *Rast. weights* 8.

The contents of Iron, Glas, Linnen Cloth, and divers other things; see the stat. *de composis. ponder. Rast.* 8.

All other commodities of tale, or number, are sold by the hundred,

Cattle and fish are sold six-score to the hundred, and yet the hundred of hard fish must contain eight score, *Rast.* 8.

whereof } Also all other headed things, as nails, pins, &c. are sold six-score to the hundred.

All other things have but five-score to the hundred.

For

Fac. 1. For the assize of Fuel, *sc.* of Cole, Tall-wood, Billet and Fagot, see the Stat. of 7 Ed. 6. 7. 43 El. 14. A sack of Coles is four bushels.

Timber well hewen, and perfectly squared, fifty foot thereof maketh the load.

Lath shall contain in length five foot, in breadth two inches, and its thickness half an inch.

Tile, six score go to the hundred: as for the assize thereof, (*sc.* the length breadth and thickness thereof.) See Statute, 17 Edwardi 4. cap. 17. P. Contents.

Title 2.

A Bale of Paper is ten Ream, a Ream is twenty quires, a quire is twenty five sheets. Paper.

A Roll of Parchment is five dozen or sixty Skins.

P.weights. 4 Three Barly corns measured from end to end (or four in thickness) maketh one inch. *sc.* 25. Measures of length.

Four inches make an handful, 27 H. 8. 6.

Twelve inches make a foot.

Three foot a yard.

Three foot and nine inches make an ell.

Five foot do make a Geometrical pace.

Seven foot make a fathome.

Five yards and a half (which is 16 foot and an half) make a pole, rood or perch, *Ibid.*

And yet by the usage of many Countries the pole doth vary, for in some places it is 18 foot, and in some places 21 foot, and in other places 24 foot go to the pole: and there if a man sell a certain number of Acres of Wood, &c. it shall be measured according to the usage of the Country there, and not according to this Statute, for herein *consuetudo loci est observanda*. See *Crompt. des courts fol. 23. & 222.*

The same reason may seem to hold of measures of Corn by the bushel; see a little before.

Master *Osborn* writeth that the measure of 18 foot to the perch (or pole) is commonly called wood-land measure, 21 foot to the pole is called Church measure (*sc.* of land which now doth, or formerly did belong to the Church) and twenty four foot to the pole is called (and that rightly) Forrest measure.

Note, that the Clerk of the Market may inquire of the pole or perch, whereby land is measured, as well as of other measures. *Crompt. Author. des courts 221.* but the Justices of Peace are not to meddle therewith, especially out of their Sessions.

Also note that no measure shall be sealed but the bushel, half bushel, peck, gallon, pottle, quart and pint, *Crompt. fol. 222 tamen quare.*

35 El. c. 6. Forty pole in length make a furlong.

Eight furlongs (or 320 pole) make an English mile.

Note, that our English mile contains 2800 foot more then the Italian mile, the Italian mile being of 1000 paces, and five foot to a pace, and so the Italian mile is in length 5000 foot whereas the English mile is 5280 foot in length, 1760 yards.

P.weights. 4 Forty pole in length, and four in breadth (or 160 pole do make) an Acre.

Co. 9. 114. Acre Stat. *Composit. ulnarum*, & Stat. 34. Ed. 1.

And (by the opinions of Mr. *Cambden fol. 339.* and *Hollinshead, p. 13. Plow-Land impr. 1586*) one hundred acres is a hide of land; but yet (it seemeth) that a hide of land or plow-land, or carve of land, (which are all one) are not of any certain content; see hereof before, *tit. Highways.*

*Librata terra*, containeth four Oagangs, and every Ogang 13 Acres.  
Min.

A yard-land containeth in some places more, in some other less.

And yet M. Norden in his Surveyors Dialogue, page, 59. saith, that every Plow-land containeth commonly 120 Acres; and every Plow-land is four yard-land (in Latin called *quatrona terra*, or *virgata terra*) every yard-land containeth thirty Acres: and yet after some computation, every yard-land containeth but 20 Acres, and in some places 24 Acres; and this is the common account with us on the East part of *Cambridg-shire*.

Now that I have set you down the contents of most weights and measures, you must further observe.

§. 26. First that in every County (*sc.* in the Principal or Shire town there) there are (or ought to be) standards of bras for weights and measures, <sup>11 H. 4.</sup> (*sc.* for the bushel and gallon) according to the Kings standard of his <sup>12 H. 7. 5.</sup> Exchequer, there to remain with the Chief Officers of the same Town; according to the scantling of which, every City, Borough, and Market-Town within the same County ought to make them common weights and measures, to be marked by him that keepeth the standard.

Also in every City, Borough, and Market-Town, there ought to be a <sup>11 H. 6.</sup> common ballance, and a common bushel, and weights sealed, and accord- <sup>12 H. 7. 5.</sup> ing to the standard in their Shire-town (as afore said,) upon pain to every City 5 *l.* to every Borough 5 *l.* and to every Market-town 2 *l.* for their defaults.

Also no man within any City or Market-town, ought to buy or sell with any weights or measures, except they be sealed and marked in form afore-<sup>11 H. 4.</sup> said (*sc.* according to the Kings standard, and by the Officers in whose pos-<sup>12 H. 7. 5.</sup> session the Kings standard remaineth;) nor any other person out of a Market-Town, except their weights and measures be like and equal with the stan-  
dard. See *Rastall fol. 531. c. diu. 33.*

And yet it seemeth by the Statute 31 Ed. 1. & 8 H. 6. 5. (*Rastall diu. 3.* <sup>See R. diu. 117.</sup> & 26. <sup>26. 27. 28.</sup> 26.) that no man (though out of a Market-town) shall use weights or measures, nor other thing in the place of weight or measures that is not sealed, according to the Kings standard, upon pain to forfeit the value of the goods weighed or measured, and two years imprisonment, and to be fined and ransomed, and yield *quatrebles* damages. See *Rastall tit. weights,* & *Crompt 94. & stat. incerti temporis, ca. 8. Poulton Stat. at large, pag. 112.*

The Officer that keepeth the standard (in the Shire-town) shall mark and seal other weights and measures, to all other the Kings Subjects that shall require it; and they shall take for the marking of the bushel but 1 *d.* <sup>21 H. 7. 1.</sup> and for all other measures but an half penny; and for weights, for every hundred weight 1 *d.* and for half an hundred weight an half penny, and for every weight under, but a farthing.

Now



Now follow the Names of the Principal Towns §. 27:  
in every Shire ( or County ) appointed to have the keeping  
of Standards for the Weights and Measures according  
to these Statutes.

<b>B</b> edfordshire, Town of Bedford.	London, the same City.
Bark sh. the Town of Reading.	Middlesex, the City of Westminster.
Bristol, the same Town.	Norf. the City of Norwich.
Buck. the Town of Buckingham.	North. the Town of Northampton.
Camb. the University of Cambridge.	Northum. the Town of Newcastle.
Cheshire, the City of Chester.	Nottin. the Town of Nottingham.
Cornwall, the Town of Lustythiel.	Oxford, the University of Oxford.
Cumberland, the City of Carlisle.	Rutland, the Town of Uppingham.
Derb. the Town of Derby.	Shropsh. the Town of Shrewsbury.
Devon. the City of Excester.	Cinque-Ports, the Castle of Dover.
Dorf. the Town of Dorchester.	Staff. the Town of Stafford.
Essex, the Town of Chelmsford.	Somerf. the Town of Ilchester.
Glouc. the Town of Gloucester.	Southampton, the same Town.
Hampsh. the City of Winchester.	Suff. S. Edmunds-bury.
Hertf. the Town of Hertford.	Surrey, the Town of Guildford.
Heref. the Town of Hereford.	Sussex, the Town of Lewes.
Hunt. the Town of Huntingdon.	War. the Town of Coventry.
Kent, the Town of Maidstone.	Westmer. the Town of Appulbie.
Lanc. the Town of Lancaster.	Wiltsh. the City of Salisbury.
Leic. the Town of Leicester.	Worc. the City of Worcester.
Linc. the City of Lincoln.	Tork sh. the City of York.

Stat. 11 H. 7.

Levit. 19. 35, 36.

Thou shalt not do unjustly in Judgment, in Line, in Weight, or in Measure : ye  
shall have just Ballances, and true weights.

Prov. 11. 1. & 20. 20.

False Ballances, or divers Measures, are all an abomination unto the Lord.

Deut. 25. 13, &c.

Thou shalt not have two manner of weights, a great and a small; nor divers  
measures; but a right, just, and perfect weight, and measure, that thy days may  
be lengthned in the Land, &c.

## Wool. CHAP. CXIII.

§. 1. **W**here exporting of Wool is Felony, See St. of 14 Car. 2. c. 18. and  
 " here *cap.* Felony by Statute.

§. 2. **"**No person shall press together with Screws, Presses, or other Engines  
*Perfuing in order to Transporting.* " into any Sack, Bag, Pack, or other Wrapper, or Put, Press, Pack, or  
 " Stain any Wool or Yarn made of Wool into any Cask or Vessel, or  
 " shall lay or carry, or cause, &c. at or near the Shore or Coasts of the Sea,  
 " or Navigable River, any Wool, Wool-flocks, or Yarn made of Wool;  
 " with an intent to convey the same out of England or Ireland into Scot-  
 " land, or any Foreign parts, upon pain to lose the same, or the value there-  
 " of, 14 Car. 2. c. 18.

§. 3. **"**No Bags, Sacks, Packs, or Cask of Wool, Wool-fells, Mortlings, Sher-  
*Times of Carriage.* " lings, Yarn made of Wool, Wool-flocks, Fullers-earth, Fulling-clay, or  
 " Tobaccopipe-clay, shall be carried or conveyed to or from any place or  
 " places in England, but from the first of March, to the 24th of Sept. be-  
 " tween four of the clock in the Morning, and eight of the clock in the  
 " Evening, and from the 29th of Sept. to the first day of March between  
 " Seven of the clock in the Morning, and Five of the clock in the Evening,  
 " upon penalty of forfeiture thereof.

§. 4. **"**The moiety of all forfeitures by this Act to the King, the other to the  
*Forfeitures* " Prosecutor.

" Justices of Peace in their Quarter Sessions, may hear and determine  
 " Offences against this Act. 14 Car. 2. c. 18.

" The exporting, transporting carrying, or conveying of any the Goods,  
 " Wares, or Commodities mentioned in that Act, is declared a common  
 " Nuisance. 14 Car. 2. c. 18.

## Words. Newes. CHAP. CXIV.

§. 1. **J**ustices of Peace may by vertue of their Commission take Cognizance,  
 " and punish evil words, for they tend to the Breach of the Peace;  
 " especially if spoken against any publique Person or Officer; And there-  
 " fore if one say of a Mayor in the execution of his Office, that he is a  
 " Fool, an Indictment lies: But say of a Mayor playing at Dice, that he is  
 " a Fool, no Indictment lies. *Bags case M. 12 Jac. Rolls. Rep. part 2. p. 79.*

Here

Here also I will give a short View of such particular and private *STATUTES* (made only for some particular Shires, Cities, or Towns) as do give some Power also unto two (or more) Justices of Peace out of their Sessions.

## CHAP. CXV. v. 66.

- F**Or paving of *Aldgate-street*, 13 *Eliz.* 23. & 23 *Eliz.* 12. §. I.  
Aldgate.  
Cardiff.
- For the repairing of *Cardiff-Bridg*, 23 *Eliz.* 11. Cardiff.
- For Justices of Peace in *Cheshire*, &c. 27 *H. 8.* 5. Cheshire.  
Chipprow.
- For repairing of *Chipprow-Bridg*, 3 *Jac.* 23. Chipprow.
- For *Chichester-Haven*, 27 *El.* 22. Chichester.  
London.
- For paving *Drury Lane* near *London*, 3 *Jac.* 22. London.
- See more here before, *titulo London.*
- For repairing the High-way at *Non-such*, 3 *Jac.* 19. Non-such.  
Norfolk.  
Suffolk.
- For recovery of Marsh ground in *Norfolk* and *Suff.* 7 *Jac.* 20. Norfolk.  
Suffolk.
- For making Coverlets and Dornicks there, 5 *Ed.* 6. 24. Norwich.  
Northumb.
- For Recognizances to be taken of Lessees in *Northumberland*, 11 *H.* 7. 9. Northumb.
- For amending Bridges within five miles thereof, 18 *El.* 20. Oxford.  
Shepy.
- For making the River of *Thames* Navigable to *Oxford*, &c. 21 *Jac.* 32. Oxford.  
Shepy.
- For repairing a Ferry in the Isle of *Shepy*: See 18 *El.* 10. & 27 *El.*
26. For laying out new High-ways in *Sussex* and *Kent*, 14 *H.* 8. 6. 26 *H.* 8. 7. Sussex.  
Kent.
- See before. *tit. Purveyors.*
- For repair of *Upton-Bridg*, 3 *Jac.* 24. Upton.
- For wages of the Knights of Parliament in *Wales*, 35 *H.* 8. 11. Wales.
- For establishing Justices of Peace in *Wales*, 34 *H.* 8. Wales.
- For making of the Bridg at *Wilton* over *Wye*, in the Countrey of *Hereford*, 39 *Eliz.* 24. Wilton.

Thus much concerning such Statutes as the Justices of the Peace, out of their Sessions of the Peace, are to meddle withal.

Now for a conclusion of these Statutes, and of the services of the Justices of Peace therein, I wish them, that in all cases where the whole matter is (by the Statute) committed to the Justices of Peace (to one alone, or to two Justices, or more) out of their Sessions, to hear and determine, &c. as where upon his or their own view, or by confession of the Offender, or upon examination and proof of Witnesses; (and without any Indictment found or preferred) they may commit, or punish an Offender as Convict by such his confession, or examination and proof; as also where they may proceed by inquiry and indictment; that in every such case of such their judicial proceeding, they be led by no affection, but advisedly to examine and consider of, as well the fact it self, as of the circumstances, and then (in the fear of God, and according to Law) to proceed and to see, or cause due and diligent execution of the punishment to be done upon the Offenders according to the quality and quantity of their Offence, and as the Statutes themselves do direct; for law without due execution and punishment of the Offenders, is as a sheathed sword without any use or profit.

But in all cases where the Justices of Peace have power to hear and determine out of their Sessions (sc. upon their own view, or upon the confession



*Record.* §. 2. session of the offender, or upon proof of Witnesses) if upon such conviction the offender be to be committed to the Gaol, the Justices of Peace ought to make a Record in Writing under their hands, of all the matter, and of the proofs, &c. which Record notwithstanding in many cases they may keep by them, &c.

Also if upon such Conviction the offender be to be fined to the King, then the Justices of Peace are to estreat such fine, and to deliver, or send the estreat into the Exchequer, whereby the Barons of the Exchequer may cause the said fine (or forfeiture) to be levied to the Kings use.

And here I will shortly point you out some particular offences, which by the Statutes are referred to the Justices of Peace to hear and determine (out of their Sessions) as aforesaid, and will leave the rest to your own search.

*where one Justice may hear and determine out of Sessions.* §. 3. 1. Some particulars where one Justice of Peace upon his own view, or hearing of the offence may punish the offenders.  
Alehousekeepers, &c. suffering Townsmen, or any other person, to continue drinking in their houses contrary to the Statute, 1 Jac. c. 9. & 21. Jac. 7. *Vide antea, tit. Alehouses.*

Townsmen, or strangers tipling in Alehouses, &c. contrary to the Statute, 4 Jac. cap. 5 & 21 Jac. cap. 7. *ibidem.*

Persons that shall ride or go armed, contrary to the Statute, 2 E. 3 c. 5. *Vide antea, tit. Armour.*

Persons that shall have any Teinters, &c. for the deceitful stretching of cloth, *Vide antea, tit. Cloth.*

Offenders in forcible entries, or detainers, contrary to the Statutes: see *antea, tit. Forcible Entry.*

Keepers of places for unlawful gaming, *antea, tit. Games unlawful.*

Players in such places, *ibid.*

Players at unlawful games, wheresoever contrary to the Statutes, see as before.

Swearing profanely, or cursing in the hearing of any Justice of Peace, &c. *antea, tit. Swearing.*

2. Where one Justice of Peace may punish offenders as convict upon their own confession.

Alehousekeepers, Innkeepers, or Victuallers, suffering Townsmen, or strangers, to continue, or be tipling in their houses, &c. see *antea, tit. Alehouses.*

Townsmen or strangers, continuing tipling in any Inn, Alehouse, or Victualling house, see *ibidem.*

Sheriffs, &c. entring complaints in their Courts unduely; *Vide antea, tit. Sheriffs.*

Persons not repairing every Sunday to Church, see *antea, tit. Recusants.*

Profane swearers or cursers, *hic antea, tit. Swearing.*

Trespassers in Corn, Orchards, or Woods, &c. contrary to the Statute, 43 El 7. *Vide antea, tit. Trespass.*

Offences in Tile-making, contrary to the Statute, *Vide antea, tit. Tile.*

Offences in Watermen, contrary to the Statute, *Vide antea, Watermen.*

3. Where one Justice of Peace may punish offenders as convict upon examination and oath of Witnesses.

Alehousekeepers, &c. suffering Townsmen or strangers to be tipling in their houses contrary to the Statute, 1 Jac. & 21 Jac. *Vide antea, tit. Alehouses.*

Alehousekeepers, &c. selling less Beer or Ale then according to the Statute, 1 Jac. *ibid.*

Townf.

Townsmen or strangers tipling in Alehouses, &c. contrary to the Statute, 4 Jac. c. 5. *ibid.*

Persons not repairing every Sunday to Church, they may be convicted upon the oath of one Witness, *Vide antea, tit. Recusants.*

Profane swearers or cursers, *hic antea, tit. Swearing.*

Transporters of Corn, &c. *Vide antea, tit. Transportation.*

Trespassers in Corn, Orchards or Woods, &c. they also may be convicted upon the oath of one Witness, *Vide antea, tit. Trespass.*

And yet here, and in all cases of conviction upon the oath of Witnesses, the offender himself must also be heard to speak, and be examined by the Justice of Peace, &c. or else it is no lawful conviction; See *hic cap. 6. & 7. & hic infr.*

4. Where one Justice of Peace may punish offenders, as convict upon examination generally, the Statutes not shewing what persons shall be examined; in which cases it seemeth the Justice of Peace may thereupon examine, as well the offenders themselves as other Witnesses.

The defaults of the Collectors of the Sheriffs amerciaments; as also of Bailiffs of Hundreds, *Vide antea, tit. Sheriffs.*

Offences in Tile making; *Vide antea, tit. Tile.*

Offences in Watermen; *Vide antea, tit. Watermen.*

5. Where one Justice of Peace may punish offenders upon accusation or proof, generally; which accusation or proof must be by examination of Witnesses only (as it seemeth) and yet the party delinquent is (here also) to be first heard, before he be convicted or condemned, *ut supra.*

Offenders in keeping or using Guns or Crosse-bows, &c. contrary to the Statute; *Vide antea, tit. Guns.*

Disturbers of Preachers; *Vide antea, tit. Preachers.*

Souldiers that purloyned their horse or harneys; *Vide antea, titulo Souldiers.*

Note, that in these former cases, and in all other cases where the Justice of Peace is to take such examination of Witnesses, or such other accusation or proof aforesaid, though the Statute doth not expressly set down that it shall be upon oath, yet it seemeth fit that the Justice doth it upon oath: for Mr. Brook (sometimes Chief Justice of the Common Pleas) was of opinion, that every examination ought to be upon oath: and Mr. Lamb. 517. was also of opinion, that these examinations taken by the Justices of Peace ought always to be upon Oath, the rather, because the trial in these cases dependeth wholly upon these examinations; yea, in all other cases wheresoever any man is authorized to examine Witnesses, such authority to examine shall be taken and construed to be in such manner as the Law will, which is only by Oath; *Vide postea, tit. examination.*

Also where the matter is to be tried by Witnesses only, it is fit there be two Witnesses at the least (except where the Statute doth expressly allow the Oath or Testimony of one Witness.) And so was the opinion of Mr. Brook, that in such case there ought to be two Witnesses at the least; and agreeable thereto also is the Book and Word of God, *Math. 18. 16. 2 Cor. 13. Pf. 12. a.* Otherwise it is, where the trial is by a Jury of twelve men, there one Witness sufficeth, yea, there many times Witnesses are not necessary, See *1 Pl. 12. a.*

Where two Justices of Peace (out of their Sessions for the Peace) may punish Offenders as convict before them, upon the confession of the offender, or upon examination of Witnesses, or upon their own view.

Clothiers refusing to pay the wages assessed, &c. See *antea, tit. Cloth.*

Spinsters, of Sessions.

§. 4.  
Where two  
Justices  
may hear  
and deter-  
mine out  
of Sessions.

Pl. 12. a.

Deut. 17.  
6. & 19. 15.

Spinsters, &c. which shall imbecil any part of their Wool, contrary to the Statute, 7 Jac. 7. (upon proof of one Witness.)

Clothiers making deceivable Woollen Cloth, 21 Jac. cap. 18. *hic antea, tit. Cloth.*

Servants or Labourers assaulting their Master, see *antea, tit. Labourers, p. 12.*

Servants departing, refusing to serve, or taking excessive wages, &c. see *tit. Labourers, p. 6. 14.*

Persons restrained from making, &c. see *antea, tit. Malt.*

Destroyers of Partridges or other Fowl, or of their Eggs, or of Hares, or keeping hunting Dogs, contrary to the Statute, 1 Jac. 27. see *antea, tit. Partridg.*

Destroyers of Pheasants or Partridges, contrary to the Stat. 7 Jac. 11. upon proof of one Witness, *ibid.*

Such as shall put out of their Parish (as poor persons) those that be not to be put out, *Vide antea, tit. Poor.*

Also the defaults of the Overseers of the Poor *ibid.*

Disturbers of Preachers, *Vide antea, tit. Preachers.*

Offenders which shall disturb the execution of the Statute for Rogues; and Officers which shall be remiss or negligent therein, &c. *vide antea, tit. Rogues.*

The defaults of Officers and others, touching Weights and Measures, *vide antea, tit. Weights.*

But note, that this manner of trial by examination of the offenders or witnesses, is not permitted to Justices of Peace, but only in cases where either the Statutes do generally refer the Trial to their discretions, or else do specially authorize them to take the examinations.

And in all these former cases, where the Justices may hear and determine, or may punish Offenders as convict upon their own confession, or upon examination of Witnesses (it seemeth in congruity) the Justices of Peace may grant out their Warrants against such Offenders (or at least ought to send for them) to appear before them to answer their said offences: and thereupon may proceed to examine, hear, and determine the offences.

§. 5. Where one or two Justices of Peace may hear, and determine, by inquiry and indictment taken before them, out of their general Sessions as it seemeth, *viz.*

Defaults of Sheriffs and Bailiffs, in not returning sufficient Jurors to inquire of Forcible Entries, *vide antea, title Forcible Entry.*

Offenders in Riots, *vide antea, title Riots.*

Transporters of Corn, &c. *vide antea, title Transportation.*

Offences committed in Tyle-making, *vide antea, title Tyle.*

Defaults as well of Officers, as of Buyers and Sellers, with unlawful Weights or Measures, *vide antea, title Weights, &c.*

And in these cases the offence being found upon such enquiry, these Justices have authority not only to make out process against the Offenders, under their own Teste, but also to fine them, and to commit the Offenders to Prison till they have paid their fine, and to deliver them upon payment of the same, or upon Sureties given for it: or otherwise (it seemeth) the Justices may receive the traverse of the Offenders, &c. for to all these effects, the words (in those statutes) Hear and Determine, do seem to lead and inable the said Justices.

Also in these cases, the Justices precept to the Sheriff, to return a Jury before



before them, may be in this or the like form : and either in the Kings name, or under the name of the Justices, &c.

Vide hic  
cap. 130.

*Jacobus Dei Grat. Rex Angliæ, &c. vicecom' Cantabr. salutem. Præcipimus tibi quod non omittas propter libert' aliquam Comit tui, quin venire fa' coram Justic. nri's de pace in comitat' præd. conservand. assign' apud Linton in Co: præd. die Julii proxim' sequent' 24 probos & legales homines de Hundred de Radfield & Chilford ad audiend' & faciend' ea quæ eis ex parte nostra ibidem tunc fuerit injungend'. Et habeas tunc & ibidem hoc mandatum. Teste Mi : D. ( apud West-wrattling ) tali die, &c.*

Sureties for the Peace. CHAP. CXVI. V. 67.

Lamb. 77.

**S**urety for the Peace, is the acknowledging of a Recognisance (or *what it is:* *bond*) to the King (taken by a competent Judg of Record) for the keeping of the Peace : and it is called Surety, of the word *Securitas*, because the Party that was in fear, is thereby the more secure and safe.

F. N. B.

19. h.

Lamb. 77.

This surety for the peace, every Justice of Peace may take and command in two manners, or by a two-fold authority.

§. 2.

Two ways  
Supplicavit.

1. First, as a Minister (commanded thereto by a higher authority) as when a Writ of *supplicavit*, directed out of the Chancery, or Kings Bench, is delivered to his hand : upon this Writ, that Justice of Peace only (to whom such Writ is delivered) is to direct his Warrant, to cause the Party to be brought before him (alone) to find Sureties for the Peace. And therein the said Justice is to do in every behalf, according as the same Writ doth direct him.

See more concerning this Writ of *supplicavit*, &c. *postea, sub hoc tit. Surety for the peace.*

2. Secondly, as a Judg. (and by vertue of his Office, and of his own power derived from his Commission) he may command this Surety of the Peace to be found ; and that, either of his own motion and discretion, or else at the request or prayer of another.

The Justice of Peace upon his own motion and discretion, may (if he see cause) command surety of the Peace to be found, or may bind a man to the peace (and that against all the Kings Subjects, if the Justice shall so think meet) in these cases following.

§. 3.

upon discretion.

sl. 76.

1. One that maketh an assault, or affray upon the Justice of Peace himself, the Justice may cause or command him to be arrested or attached, and carried presently before another Justice of Peace, who may commit him to Prison, till he hath found Sureties for the peace. *Vide hic.*

For what  
Act.

PR. 18. 19.

2. Such as in his presence shall make an affray upon another, or shall strike, or assault, or offer to strike another, the Justice may commit him to Prison, until he hath found Sureties for the peace. *Vide antea, tit. Affray & Br. faux imprisonment. 12.*

3. So of such as in his presence and hearing shall threaten to kill, beat, or hurt another, or to burn his house.

R. 18.

4. So of such as in his presence shall contend only in hot words ; for from thence oftentimes do ensue affrays and batteries, and sometimes maims, yea manslaughters and murders.

See Crom.

142.

R. 4.

5. So of such as in his presence shall go or ride, armed offensively, or with an unusual manner of Servants or Attendants : for these are accounted to be an affray and fear of the People, and a means of the breach of the

the peace: so of Servants and Labourers, that shall bear any Weapons contrary to the Statute of 12 R. 2. *Vide antea, tit. Armour.*

6. Also he may bind to the peace any other person, to him suspected to be inclined to the breach of the peace. 9 Ed. 4.  
P. R. 4.

7. If (out of the presence of the Justice of Peace) any man shall threaten to kill, maim, or beat another, or do attempt, or go about to do it: then any Constable being present, may arrest such Offender, to come before a Justice of Peace, to find Sureties for the peace, and the Justice may bind him to the peace. Crom. 135  
and 143.  
P. R. 21.  
Fi. Bar.  
201.

8. If any Constable shall perceive any other persons in his presence to be about to break the peace, either by drawing weapons, or by striking or assaulting one another, or by assaulting the Constable himself; he may take assistance, and carry them all before the Justice, to find Sureties for the peace, and the Justice may bind them. 1 H. 7. 7.

9. If the Constable shall learn, that certain persons be fighting or quarrelling in a house, he may break open the doors, and arrest them, and carry them before a Justice of Peace, to find Surety of the Peace: and the Justice may bind them. P. R. 11.

10. Yea, the Justice of Peace (either upon his own discretion, or upon any mans complaint) may make his Warrant, for any such as have made an affray (though out of his presence) and may bind them to the Peace. *Vide antea, tit. Affray.* See B.  
peace 11.  
21 Affray.

11. If one hath received a wound, it seemeth the Justice of Peace may take Surety of the peace of the one and the other, (by his discretion) until the wound be cured, and the malice be over. *Popham*, late Lord chief Justice of England (an honourable and grave Judg) did accordingly between *James* and *Benton* at *Cambridge* Affiles, 3 Jac.

12. All such as shall go or ride armed (offensively) in Fairs, Markets, or else-where; or shall wear or carry any Guns, Dags, or Pistols charged; it seemeth any Constable, seeing this, may arrest them, and carry them before the Justice of Peace, and the Justice may bind them to the peace; yea, though those persons were so armed or weaponed for their defence upon any private quarrel, &c. for they might have had the peace against the other persons: and besides, it striketh a fear and terrour into the Kings Subjects. 2 E. 3. 4.  
Comm.  
110.

See more *hic antea, tit. Affray and Armour.*

13. Also the Justice of Peace (upon his discretion) may bind to the peace a common Barrettor, *vide tit. Barrettor.*

14. So of Rioters, *vide tit. Rioters, & Lamb. 79.*

15. He that standeth bound to keep the Peace, if he hath broken (or forfeited) his Recognizance by breach of the Peace, the Justices of Peace may and ought of discretion to bind him anew, and by better Sureties, for the safety of the person in danger; but yet by good opinions, that must not be done, until the party be convicted of the breach of the Peace upon his Recognizance; for before his conviction, it resteth indifferent whether the Recognizance be forfeited or no: but after that he is thereof convicted, and that the forfeiture be levied, the Recognizance is then utterly determined; and then he is to be compelled to find new Surety, or else to be sent to the Gaol. 21 E. 4. 40.  
Br. peace  
17.  
Lamb. 111  
Crom. 147

So it seemeth, though the forfeiture be not levied, yet if the Party be convict for breaking the Peace, he shall be bound of new, *Cromp. 141. and Br. Recog. 21.*

16. Also he that standeth bound to keep the Peace, if his Sureties be insufficient, the same Justice, or another Justice of the Peace, may compel him to find better Sureties. Lamb.

And in many of the former cases, the Justice of Peace ought of duty (or at least in good discretion) to command this surety for the Peace, although the same be not required by any other person: and if any such person shall refuse to give such surety, the Justice of Peace ought to send him to Prison, there to remain until he shall find such surety.

5 Ed. 4. 3. Br. peace 8. If a Justice of Peace (upon his own discretion) shall cause one to be arrested to find sureties for the Peace, and shall after let him go without taking surety, or binding him to the peace, yet the Party hath no remedy: for an action will not lie against the Justice of Peace for this, he being a Judge of Record. See 9 H. 6. f. 60. and 9 E. 4. f. 3. Br. Judges 2. 10. and Br. f. x. imp. 12.

Lamb. 80. P. R. 18. A Justice of Peace may perswade a man to require the surety of peace against another, and he himself may grant a Warrant for it, because it is no more then he might have granted of his own authority, without any demand made; and it shall be presumed that he saw cause to do all this.

Also at the request or prayer of another, the Justice of Peace may command this surety of the Peace, and may grant his Warrant for it. *upon request.*

F. N. B. 79 H. 1. Lam. 84. 89. But here the Justice of Peace must and ought first to take an Oath of the Party that demandeth the peace, which Oath must be to this purpose, *sc. That he standeth in fear of his life, or of some bodily hurt to be done to himself, or to have his houses burned (and that he doth not crave the peace for any private malice, or for vexation, but of very fear, and for the needful safety of his body or houses) for the words of the Commission herein are, Et ad omnes illos qui alicui, vel aliquibus de populo nostro, de corporibus suis, vel de incendio domorum suarum, minas fecerint, ad sufficientem securitatem de pace, &c. inveniendam, &c.* §. 3. *Outb.*

So he that shall be threatned to be hurt in his body (*sc. to be beaten, wounded, maimed, or killed*) the Party so threatned may crave, and have the surety of Peace against the other, and it is to be granted properly in such cases.

Also if a man do fear that another will kill, maim, beat, assault, or hurt him in body, he may crave the peace against such other person.

So if a man do fear that another will burn his house.

112. 79. g. h. So if a man do fear that A. will procure or cause any such hurt to be done him by another, either in his body, or in his houses; for the words of the Recognizance be, *Non faciet, nec fieri procurabit.*

Crompt. 135. 2. So if a man lieth in wait to beat, kill, or hurt another, it is good cause to require this surety, Crompt. 135.

44. *Unc' nota les parolz dent in le Commission, Minas fecerit, &c. per quelx parolz sce que per le Comission, le peace nemy destre grant sur ascun request, ne ant remet, Si non tantum lon home est menace, & pur ceo lon A. craved le peace versus B. pur ceo que B. usa de vaer ove un Pistol, & le Justice de P. sur ceo granted le peace, Sir Nich. Hyde blamed le Justice, disant que il ne devoit aver lye B. a le peace, pur ceo que il n' ad menace A.*

Lamb. 84. If a man be threatned to have his Goods burned, it seemeth by the opinion of M. Fitz. that he may demand surety of the peace for this: *quare tamen*, because he may recover his Goods, or Damages for, and to the value of the same, Co. l. 255. *Threatning*

17 Ed. 4. 4. Br. peace 22. And where a man shall threaten to imprison another, it is holden, That the peace shall not be granted; for that the Party wronged may have his action of false imprisonment, or a Writ de homine Replegiand', and so shall recover damages for his imprisonment.

Lamb. 85. Yet inquire hereof, for to threaten imprisonment is within the words *minas de corporibus*; and like harm may happen to a man by hard imprisonment, A a



ment, as by cruel beating of him : and to threaten imprisonment, is a cause to avoid a Deed or Bond, as well as to threaten to kill, or maim one, &c. F. N. B.  
80. g.  
Lamb. 89.  
39 H. 6. Br. Dureff. 9: vide Co. l. 253.

Where a man is in fear that another will hurt his Servants, or his Cattle, or other goods; this surety of the peace shall not be granted by the Justice of Peace : but in this case M. Fitz. saith, the Party may have a special Writ out of the Chancery, directed to the Sheriff, that he shall cause such person to find surety, that he shall do no hurt or damage to the other man in his body, or to his Servants or Goods. And if he will not find surety, that then he shall arrest and detain him in Prison, until he shall find surety : and that the Sheriff shall certifie all that he shall do thereupon into the Chancery, &c. And it seemeth the Sheriff ought to take such surety, by Recognizance. And yet if a man shall threaten to hurt my Servant, or my Wife, or Child, I see no cause but that in their behalf I may crave the peace at the Justices hands, by the words of the Commission, and that the Justice ought to grant it.

If a man will require the peace, because he is at variance, or in suit with his Neighbour, it shall not be granted by the Justice of Peace.

Note also, the surety for the peace shall not be granted but where there is a fear of some present or future danger, and not merely for a battery, or trespass that is past, or for any breach of the peace that is past: for this surety of the peace is only for the security of such as are in fear. Now *Mentis, est presentis vel futuri periculi causa, mentis trepidatio* : and so this surety is, *providere presentia, & futura, & non preterita*. Br. Imp.  
41.  
L. R. 14.

And as for a Battery, or other like Trespass that is past, the Party wronged may have his action of Trespass or Battery, &c. or may punish the Offender by indictment at the Kings Suit: and yet in such case the Justice may (if he see cause) bind over the Affrayer. *Vide ante & Ex.* 21. 19.

§. 6.  
Dery.

If the Justice of Peace shall perceive that this surety for the peace is demanded merely of malice, or for vexation only, without any just cause of fear, it seemeth he may safely deny it. As in common experience we find it, That where *A.* shall upon just cause come and crave the peace against *B.* and hath it granted to him; when *B.* shall come before the Justice, *B.* likewise will crave the peace against *A.* (and will perhaps surmise some cause) but yet will nevertheless be content to surcease his Suit and Demand against *A.* so as *A.* will relinquish to have the peace against him; here the Justice of Peace shall do well (as I think) not to be too forward in granting the peace thus required by *B.* but to perswade him, and to shew him the danger of his Oath which he is to take; but yet if *B.* will not be perswaded, but will take his Oath that he is in fear (where indeed he neither doth fear, nor hath cause to fear) this Oath shall discharge the Justice, and the fault shall remain upon such complainant.

And when the Justice hath so granted the peace to one that (in the Justices Judgment) shall crave or require it only out of malice, or for vexation, the Justice may presently in good discretion bind him to the good behaviour, that so required the peace.

For whom, and against whom this surety for the Peace shall be granted. CHAP. CXVII. V. 68.

**T**He Law hath conceived such an opinion of the peaceable disposition of Noblemen, that it hath been thought enough to take one of their promises upon his honour; that he would not break the peace against a man, *Br. Contempts*, 6. 24 E. 3. 3. and 17 E. 4. 4. §. I.  
Noblemen.

And therefore if a man shall have cause to have the surety of the Peace against a Lord of the Parliament, or such great and noble Personage, he shall not have a Warrant from the Justices of Peace to that Purpose; nor yet have a *Supplicavit* out of the Chancery, directed to the Justice of Peace therefore: but if there be cause, he may have a *Subpœna* out of the Chancery (of common right, as it seemeth) and there such Lord or Nobleman shall be bound to the peace. And yet if such Lord will not appear upon the *Subpœna* served, *quære*, if an attachment will lie against him upon such his default, *M. Cromp. f. 134. b.* saith that it was holden in the case of the *L. Cromwell*, in the Chancery, about 18 *El.* That an attachment lieth not against a Lord where he maketh default upon a *Subpœna* against him out of the Chancery, *Dier 315.* seemeth to accord.

But though it be true that the person of a Baron (who is a Peer of the Parliament) shall not be arrested (for, or in cases of debt, or trespass, &c.) by his body, first in respect of their dignity, secondly in respect that the Law presumeth that they have sufficient lands and tenements whereby they may be distrained, yet in cases of contempt, it seemeth, they may be arrested by *Capias*, or attachment, &c. *Vide 27 H. 8. f. 22. b.*

Or else (it seemeth) that the party may crave the peace in the Chancery, against such Lord or Peer (*sc.* to have a *Supplicavit* directed to the Sheriff) and then the Sheriff may and ought to execute the same: and if the Sheriff shall not do his office therein, an *Alias*, *Plur.* and attachment lieth against him. And if the Sheriff shall return, That such Lord is so puissant, that he cannot arrest him; upon such return the Sheriff shall be grievously amerced (for he might have taken *Posse comitatus*, *sc.* he might have levied 300 men by his discretion, if there had been need, to have aided him in such case.) And if such Lord or Peer, who is by the Sheriff so arrested, shall refuse to obey the arrest, and shall make a *Rescous*, whereupon the Sheriff shall return a *Rescous*, hereupon shall there be an attachment granted out against such Lord, to arrest and take his body for such his contempt.

The same law and remedy seemeth to be where a man hath cause to have the surety of the peace against a Dutches, Countess, or Baroness; for they are Peers of the Realm, and shall be tried by their Peers, though in respect of their sex they cannot sit in Parliament: and they are in the same degree (as concerning their Nobility, and the privileges incident to their dignities) with Dukes, Earls and Barons. But here note this diversity, *sc.* if such Woman being a Countess, or Baroness, &c. by marriage only, shall marry again under the degree of nobility, she hath thereby lost her name of dignity (together with the privileges of her said nobility also as it seemeth) for in such a case, *Si mulier nobilis nupsit ignobili, desinit esse nobilis*, and that which was gotten by marriage may also be lost by marriage; for, *Eodem modo quo quid constituitur, dissolvitur*; But if she be noble by birth or descent, whomsoever she shall marry, yet she remaineth noble: for birth-right *est Character indelebilis*, *vide Dyer 79. & Br. Noms de dignitf, 31. & 69. & O. l. 168.* Noblemen.

And yet by the curtesie of England, if Women get to any degree of Estate; they never lose it by marrying after more meanly, but do still take place according to the state of their first Husband.

§. 3.  
Knight.

Surety of the peace may be granted by the Justice of Peace against a Knight, and against all other lay persons being under the degree of a Baron, or Peer of the Realm, and they shall be bound with sureties.

"Sir Nicholas Stoughton in Surrey, was upon the complaint of one Gilham, required in Sessions to give Sureties for the good behaviour for a sufficient cause, he refused, the Sessions committed him until, &c. he gave sureties; and afterwards complaint was made hereof in the Kings Bench, and he was compelled there to give sureties, notwithstanding it was objected that the Justices of Peace were all of equal power: But it was answered by the Court, that the Sessions made a Court, which Court might require sureties for the Peace, or good Behaviour of any one Justice of Peace.

Ecclesiastical persons (if they be not attending upon Divine Services) may be arrested for the peace, and they shall be bound with sureties: But whilest they are doing any Divine Service in the Church, Church-yard, or other place dedicated to God, they may not be arrested, 50 Ed. 3. 5. P. Arrests 1. See Stat. 1. R. 2 cap. 15. & 1 Ma. c. 3.

36 H. 6. 23.  
Br. Moign  
14. & 15.

§. 4.  
Sheriff.

Surety of the peace may be granted against the Sheriff, under-Sheriff, Coroner, Escheator, and other such Officers of Justice. But M. Marrow, adviseth, that such persons be not bound *versus cunctum populum*: but only against such persons as shall demand it, lest otherwise it should argue them unworthy and unmeet to bear or exercise any such Office in the Common wealth, if there should be cause to bind them *versus cunctum populum*.

*Si in overt Sessions un Justice de peace abuser anter Justice de peace semble que les autres Justices poit luy lier al peace Crompt. 122. a Quere sil ne amnasse l'anter?*

One Justice of Peace may grant his Surety to any man, against one of his fellow Justices (and yet the Commission is joyn't; ) but great discretion is herein to be used.

Wife.

Yea, a Justice of Peace upon demand, may grant this Surety of the peace against his own Wife: and yet he and his Wife are but one person in Law.

If Surety of the peace be demanded against a Juror at the Sessions, it is grantable; but yet the same would not be granted or done before the Sessions be ended.

Justice.

One Justice of the Peace may demand his Surety of the peace (at the hands of his fellow Justice) against another man.

If a man hath cause to have Surety of the peace against one dwelling in the Cinque-Ports, he must have a Writ out of the Chancery, directed to the Constable of Dover, and to the warden of the Cinque-Ports: the form thereof, See in Fitz. N. B. 80.

Wife.

The Wife may demand this Surety against her Husband, (if he shall threaten to kill her, or outrageously to beat her, or if the Wife hath any notorious cause to fear that he will do so) and it shall be granted her by the Justice of Peace, or she may have it by *supplicavit* in the Chancery, Fitz. 238. f. Br. Peace 23.

Fitz. N.B.  
80.

The Husband for the like causes, may demand surety of the Peace against his Wife. *Et si el ne poit trouve Sureties, el ferra commit, &c. & issint home poit est rid dun Shrew.* "But it was resolved T. 9. Ca. B. R. that a Husband cannot have sureties of the peace of the Wife.

Also



Also the Justice of Peace upon his own discretion, may in either of the aforesaid Cases between the Husband and Wife (especially happening in his presence) grant surety of the peace.

Lamb. 81. An Infant under the age of fourteen years, may demand this surety, and *Infant.* it shall be granted him.

Also this surety of the peace may be granted at the prayer of any person, against a *Feme Covert*, or against an Infant though he be under 14 years of age. (For if an Infant under 14 hath discretion to demand the peace, &c. then hath he discretion to break the peace.)

Co. 1043.  
Crompt.  
235. 9.

But if an Infant and a *Feme Covert*, shall be bound by sureties, only, and they themselves shall not be bound, and if they cannot find sureties, they shall be committed to Prison until they have found sureties. And yet if an Infant shall be bound to the peace, &c. by Recognizance taken by a Justice of Peace, it seemeth he shall be estopped to avoid such a Record, if he doth not avoid it during his minority, for it is not void but voidable, by *Audita querela*, during his minority. Dyer 232.

But if a *Feme Covert*, shall be bound or acknowledg such a Recognizance (though her Husband joyn therein with her) yet it is merely void as to the Wife, although she overliveth her Husband.

A man of *Non sane memoire*; this surety shall neither be granted against him, nor to him upon his request; and yet if there shall be cause, the Justice of Peace (upon his discretion) ought to provide for his safety. §. 5. Non compos.

A man that is Lunatick (*sc.* who at some seasons hath the use of reason, and at othertimes not) it seemeth this surety of the peace may be granted against him; and also that he may demand the same against another. Lunatick.

See Co. 4.  
124. & 11.  
77.

And if one of *Non sane memoire* or a Lunatick, be himself bound by Recognizance before a Justice of Peace, to keep the peace, it seemeth such Recognizance shall bind them, and all others for ever.

But *quare*, if there be not a difference to be taken herein, where a Recognizance by an Infant, or one that is *non Compos mentis*, shall be acknowledged in a Court of Record, or in open Sessions, and where before a Justice of Peace out of the Sessions.

A man that is deaf, dumb, and blind, be it naturally, (*sc.* that he was so born,) or accidentally, he shall not have this surety granted to him, for he hath no understanding to ask it, and yet for such a person, (or any other person not having reason to demand the peace) if there be cause, the Justice of Peace, upon his discretion, ought to provide for their safety. Natural Infirmitate.

A man that is born dumb and blind, may have understanding; and therefore it seemeth this surety may be granted to him, or against him.

But a man that is born dumb and deaf, can hardly have understanding; for though the sight be the chiefest sense, yet by hearing we come chiefly to knowledg, and therefore it seemeth not grantable to him, or against him. See *Stamf. de Prærog. fol. 33. 34. Co. l. 135.*

And yet a man that is dumb and deaf, or blind and deaf accidentally, may have understanding, and therefore this surety may be granted to him, or against him.

Also this surety of the peace may be granted against an impotent person, although he be such a one as is not like to break the peace himself; for he may procure another to kill, or beat one: and the common form of Recognizance is to bind a man from procuring hurt, as well as from doing hurt.

This surety of the peace may also be granted to, or against, a man attainted of Treason or Felony. §. 6. Attaint.

The like law of him that is convicted of Heresie.

A man excommunicate may have this surety granted to him, or against him, Crom. 34.

So also of a man that hath abjured the Realm; for notwithstanding the abjuration, he oweth the King his allegiance, and remaineth within the Kings protection, and the King may pardon and restore him again: *Qui abjurat regnum, amittit regnum, non Regem, Co. 7. 9. b.*

The manner of abjuration, see *lib. intr. fo. 1.*

A man attainted in a *Premunire*, may (at this day) require, and ought, to have this surety granted to him, *P. R. 19. Cromp. 133.*

Alien.

An alien born who is made Denizen, may have this surety; and so of an alien born who liveth in England under the Kings protection (although he be not made Denizen.) Crom. 134. I. R. 19.

And so of an alien, whose King is in League with our King; or if there be no Wars between this Realm and that Realm whereof the alien is; for by the Common Law, all these may get and have within this Realm any personal goods, and may sue for the same, and so have the benefit of the Kings Laws and Protection. But an alien who is the Kings enemy, (*scil.* where there is open War between our King and his King) shall not have this surety granted to him, nor any other benefit of the Kings Laws. Co. 7. 17. Dyer 1.

Who shall be said to be an alien, see *Co. 7. 16, 17.*

Subjects.

In *Calvin's Case*, 6 *Jac. Reg.* there is a difference taken between *ante-nati*, & *post-nati*, in Scotland, where it is holden, That *ante-nati* in Scotland, *sc.* such as were born before the Kings happy coming to the Crown of England, they are here aliens born; the reason is, for that at the time of their birth, they were under the legiance and obedience of another King; and he could not be a subject born of the Kingdom of England, that was born under the legiance of a King of another Kingdom. And yet it is manifest, That *ante-nati*, being the Kings Subjects, are herein provided for, by the Commission it self; the words whereof are, *Et ad omnes illos qui alicui vel aliquibus de populo nostro*, &c. of which number *ante-nati* be; so as they may and ought to have this surety granted them, as well as any other subjects. See *Dyer fol. 304. & Pl. 306. a.* Co. 7. 18.

An *Irishman* born, is a natural born Subject, and capable of, and inheritable to Lands in England, and therefore may have this surety. Co. 7. 17.

Infidel.

But it may be questioned, whether an Infidel, Pagan, or Jew, shall have this surety granted them. For in Law they are *Perpetui inimici*, there is between Christians and them perpetual enmity, and can be no peace: neither can they get any thing within this Realm, nor maintain any action at all, 12 *H. 8. 4.* Co. 7. 17.

Villain.

A Villain or Bondman may have this surety of the peace against his Lord, and the Lord may have it against his Villain, and yet it maketh no manumission, although it were demanded by the Lord without any protestation, &c.

How this Surety of the Peace may be commanded, and how the same Commandment shall be executed. CHAP. CXVIII. V. 69.

S. I.  
Paroll.

The Justice of Peace may command this Surety of the Peace either by word only, or by writing.

1. By word only, the party being in his presence; as if in the presence and hearing of the Justice of Peace, one man doth threaten another, or shall 14 H. 7. 4.

shall make an affray or assault upon another, or do the like thing tending to the breach of the Peace, the Justice of Peace may command him by word to find sureties for the peace.

14 H. 7. 5. Also if one shall demand this surety against another, who is then in the presence of the Justice of Peace, and will be sworn that he is afraid of him, the Justice may by word command the same party to find sureties for the peace.

14 H. 7. 8, 9. And the Justice of Peace in such cases may (by word only) command the Constable, or any other known Officer (or his own servant) being then present, to arrest such party to find sureties for the peace, (and to take the party into his or their custody, &c.) and if the party shall refuse to find such sureties, then the Justice of Peace may commit him to the Gaol.

But if the party (against whom this surety of the peace is demanded) be absent, it is otherwise; for a Justice of Peace cannot send for any man, or command any man to be arrested, or brought before him, or to be imprisoned, who is not in his presence, by word only, but he must make his warrant or precept in writing. And *Popham*, Chief Justice, said, That the Justices of the Kings Bench, when they send for any of the Kings Subjects, it is either by Writ, or by a Warrant, or by a Tipstaff: But the Tipstaff (said he) is by prescription, except that the party be in *Westminster-hall*, &c. See the case between *Woody versus Bokers & Read-head: Termino Mich. Ann. 2 Jac. Regis, Rotul. 480. in Banco Regis.*

This Precept or Warrant then must be made in writing, and under the Justice his seal; and must be directed to some Officer, or other indifferent person, and must contain the cause, and at whose suit, to the intent the party to be bound may provide his sureties, and take them with him. §. 2. By Writing.

The form of which Precept, see *postea, tit. Warrants, cap. 121.*

Co. 5. 59. Br. Peace 9. Bufr. part 3. p. 78. 21 H. 7. 22. The Justice of Peace may make his Warrant to bring the party before himself, (to find surety for the peace) by the Opinion of *Wray*, Chief Justice; for he that maketh the Warrant, for the most part, hath the best knowledge of the matter, and therefore he is the fittest to do Justice in such case. And yet the most usual manner is, to make such a Warrant to bring the party before the same Justice, or some other of the Justices of Peace of the same County, &c. And Judge *Finewx* his Opinion was, That where a Justice of Peace doth make any Warrant for the peace *ex Officio*, (i.e. by force of the Commission, and not by vertue of a *Supplicavit*,) there the party may chuse to appear before him or any other Justice in that County: And that the party may have his *Actio* of False Imprisonment against the Officer, if he do otherwise compel him. Otherwise it is in the execution of the Writ of *Supplicavit*, as you may see here *postea, sub hoc titulo.* §. 3. Before whom to be brought.

Who may serve this Warrant, and whether the Officer may make his Deputy; and whether they need shew their Warrant or no; and whether they may break open the doors, &c. See hereof *tit. Warrants postea.*

5 Ed. 4. 13. Lamb. 92. Yer some Precedent are, *Quod Capitani, &c. P. R. 20. & Cromp. 2.* The Constable (or other Officer) before he arrest the party, upon such a Warrant, ought first to acquaint him with the matter, and withal to require or charge the party in the Kings name, to go (with him) before the Justices to find and put in sureties according to the Warrant: and if the party shall refuse to do this, *sc.* shall refuse either to go before the Justices or to find sureties, then the Officer (by the words of the Warrant) may and ought forthwith to arrest him, by vertue of that Warrant, and may convey him to the Gaol without carrying him to any Justice, and there the party shall remain until he shall voluntarily offer and find sureties: and then §. 4. How it shall be executed.



then such Officer ought to be at the next Sessions of the Peace, there to deliver in his said Warrant, and to certifie all that he did thereupon.

But if the party shall yield to go and find sureties, then the Officer may not absolutely arrest him; but yet the Officer is not bound to go up and down with the party, to find sureties, but may keep the party until he can procure sureties to come to him: and if afterwards the party shall make any resistance, or shall offer to go his way, then the Officer may arrest him, and by vertue of that Warrant may carry him to the Gaol, and may also imprison him in the Stocks, until he can provide aid to carry him to the Gaol.

When the party cometh before the Justices of Peace by force of this Warrant (or by force of any other like Warrant for the Peace, good Behaviour, or a Riot, or the like) the party must offer sureties to the Justice of Peace, or else the Justice may commit him to Prison; for the Justice needeth not to demand surety of him. 14 H. 7.  
Br. peace & Mainp.  
39.

Also after that the party shall be brought before the Justice, if before him he shall refuse to find sureties, the Officer without any new Warrant or Commandment, may carry the party to Prison, and that by the words of the first Warrant; and if he shall refuse thus to do, that then, &c. See the form of the Warrant. C. 5. 50.

If the Officer do arrest the party, and do not carry him before some Justice of Peace to find sureties, &c. or upon the refusal of the party, if the Officer shall arrest him, and do not carry him to the Gaol, in both these cases the Officer is punishable by the Justices of Peace for this neglect, (by Indictment and Fine at their Sessions:) And also the party arrested, may have his Action of false Imprisonment for the arrest: for where the Officer doth not pursue the effect of his Warrant, his warrant will not excuse him of that which he hath done, 21 H. 7. 23. a. 3 H. 7. fol. 3. b. Brian & Br. *faux imp.* 21. 5 Ed. 4. 6.  
R. R. 20.

§. 5.  
Dye or re-  
lease.

And if the party be imprisoned for default of sureties, and after he that demanded the peace against him happen to dye, or shall release the peace, it seemeth in these cases, the Justice of Peace may make his Liberate or Warrant for the delivery of such Prisoner; for after such death or release, there seemeth no cause to continue the other in Prison. Also any Justice of Peace may (upon the offer of such Prisoner) take surety of him for the peace, &c. and may thereupon deliver him.

It seemeth (by some Opinions) That if the party imprisoned for not finding sureties, hath a Suit depending in the Common Pleas, he may by the course of that Court, by a Writ of Priviledg, be discharged of his imprisonment, if the other party be not ready in the Court at the day of the return of the Writ, to pray there new sureties of the peace. But *Quere*, for it may be, he which demanded the peace, hath no notice of the removing of his body, and then how can he be ready in the Court of Common Pleas at the day? and therefore it may seem a hard case so to be defeated of this surety. 4 E. 4. 16.  
2 H. 7. 24.  
Br. Privi-  
ledg. 31.  
12.  
Lamb. 96.

§. 6.  
Execution  
of warrant

If the Party hath gotten sureties, then if the Warrant proceed *ex-officio* (and not upon the Writ of *Supplicavit*) and be a general Warrant (i. e. to come before me or some other Justice) the party may go before any other Justice of Peace to offer his surety; yet he shall not inforce the Officer to travel to a Justice out of the Division or Limit where they be dwelling, without good cause: Nay, it is at the election of the Officer (who is the minister of Justice) to carry the Party attached to any other Justice of Peace that he will: for it is more reason to give this election to the Officer (who in presumption of Law is a person indifferent, and is sworn to execute his Office Co. 4. 54.  
B. F. x. imp.  
11.  
B. peace.

Office duly ) then to give the election to the delinquent himself, who by presumption will seek shifts, and weary the Officer; this hath been so adjudged.

Lamb. 98. If the other Justice of Peace (before whom the Party so attached shall come) shall refuse to accept and take such surety being offered to him, this is punishable: for such Justice of Peace ought to take of him such surety, and to bind him by Recognizance: but yet that must be done in such sort, in all points, as the form of the former precept doth require: and thereupon the same other Justice of Peace (having so taken surety for the peace) may and ought upon request, to make his *Superfedeas* to all Officers, and to all other the Justices of Peace of the same County, and thereby the said Party shall be discharged from finding other surety; and from any other arrest for the same cause: But by such *Superfedeas* that other Justice cannot discharge the first Warrant of the first Justice, until the Party be bound indeed; nor can give any other day to the Party to appear at any other Sessions, &c.

Refusing.  
§. 7:  
Superfedeas by  
a Justice of  
Peace.

Crompt.  
145.

Also a Justice of Peace of the County, by a *Superfedeas* cannot discharge a Warrant awarded by his fellow Justice, by force of a *Supplicavit* to him directed out of the Chancery, or Kings Bench, to take the surety of peace of one resident in that County.

Also when a man doth fear, that surety of the peace will be demanded against him in the County, or doth hear that such a Warrant for the peace is already granted out against him, by a Justice of Peace; it seemeth in either of these cases, he may go and give surety of the peace before any other Justice of Peace of the same County where he dwelleth, and thereupon may have a *Superfedeas* from that Justice of Peace, &c. But in such case it is fit that such Party be urged by such Justice to put in sufficient sureties, and that he be bound towards the King and all his People, and to appear at the next Sessions.

If any Officer having a Warrant from a Justice of Peace to arrest a man to find surety of the peace, shall receive a *Superfedeas* (out of the Chancery or Kings Bench, or from any Justice of the Kings Bench, or from any Justice of Peace of that County) to discharge the same surety of peace, and yet nevertheless will urge the Party (by force of his Warrant) to find (new) surety for the peace, the Party may refuse to give it; and if he be arrested or imprisoned for such refusal, he may have his action of false imprisonment against such Officer: for such *Superfedeas* is a discharge of the former Precept or Warrant.

Lamb. 101

The form of a *Superfedeas* granted by a Justice of Peace; See *postea*, tit. Warrants.

Lamb. 99. And this *Superfedeas* is sufficient, though it neither name the Sureties, nor contain the sums wherein they are bound; but yet it is the better form to express them both. See 2 H. 7. 1.

Fitz. N.B.  
§ 1. 2. &  
238. c.

If the Party shall mislike to be (or stand) bound to the peace, by the Justices of Peace in the Country, then may he (either before or after that he is bound in the Country) go or send up to London, and there give surety for the peace (either in the Kings Bench or in the Chancery;) and thereupon the Party may have a *Superfedeas* (out of the Court, where he hath given such surety) to restrain the Justices of Peace of the Country from taking any surety of the peace of him: and then the Justices of Peace of the Country, after the recit of such *Superfedeas*, must forbear to make any warrant for the peace against that Party. And if any Justice of Peace have granted out any such warrant against the said Party, the said Justice must make his *Superfedeas* to the Officers, thereby commanding them to surcease,

§. 8.  
Superfedeas  
from above.

surcease, to put his former Warrant in execution, and so to discharge it, and to discharge the Party of an arrest, or imprisonment thereupon. See more *postea*, *sub hoc titulo*.

The form of a *Supersedeas* for the peace, or good behaviour, out of the Kings Bench. See *lib. intr.* 454. *Quia invenit suffic. securit. pacis nostræ quod ipse se bene geret erga nos & cunctum populum, &c.*

The form of a *Supersedeas* for the peace out of the Chancery. See *Fitz.* 81. c. & *Register* 89.

Note, that this *Supersedeas* out of the Chancery, may be procured at any time in the vacation, and out of term, *Fitz. Nat. Br.* 236. a.

These Writs of *Supersedeas* from the Chancery, or Kings Bench, are commands to the Justice of Peace to stay him from binding the said Party to the peace, which otherwise he might not deny.

If the Justices of Peace shall not surcease after a *Supersedeas* (out of the Chancery or Kings Bench) to them delivered, an attachment will lie against him or them for such contempt, and besides they may be fined and imprisoned for it. Lamb. 103

Yea such a *Supersedeas* coming out of those High Courts to the Justices of Peace, they ought thereupon to surcease, although such a *Supersedeas* should be awarded against Law.

If such a *Supersedeas* shall be directed to the Justices of Peace, and Sheriff; that Justice to whose hands it shall be delivered, may keep it, and may deliver the label to the party.

And in these and the like cases, the Justice of Peace shall do well to send to the next general Sessions of the peace, as well the said *Supersedeas* (if it come to his hands) as also the Recognizance which he had formerly taken of the party (if he have taken any) for peradventure the Recognizance was forfeited before the *Supersedeas* was purchased; or if it were not forfeited, yet the Conusor is not indamaged thereby.

If the Party shall procure such *Supersedeas* (out of the Chancery, or Kings Bench) after that he is bound (by Recognizance) before the Justice of Peace, to keep the peace, &c. and to appear at the next Sessions, *quare* whether the Party sending (by his Servant) such *Supersedeas* to the Justice of Peace at the next Sessions, be thereby discharged of his appearance there, the Recognizance also being certified thither by the Justice. Lamb. 113  
115.  
Crompt.  
140.

It seemeth to some, this difference is to be holden therein, *sc.* if the Party were bound (before the Justice of Peace) to keep the peace against all men, &c. and shall after procure such a *Supersedeas*, testifying that he hath found surety in the Chancery, &c. against all men for ever, and shall send this to the Sessions, this shall discharge his appearance at the Sessions: otherwise if the *Supersedeas* shall testify, that he hath found surety, but till a certain day (which is after the next Sessions.) But yet it seemeth safest in both cases, for the party to appear to save his Recognizance. See to like purpose the case in 28 H. 8. *Dyer* f. 25. where a man being arrested by the Sheriff upon a *Capias*, found sureties for his appearance at the day, and there came a *Supersedeas* to the Sheriff, and it was moved, whether it were necessary for the Defendant to appear, or not, to save his Bond; or that his appearance or surety were discharged by the *Supersedeas*: And the opinion of the Court was, That he ought to appear for the saving of his Bond. Also the Presidents of Entries are, that the Party bound did shew his *Supersedeas* in Court, and prayed allowance thereof, and was thereupon discharged. 28 H. 8.  
Dyer 25  
Crompt.  
140.  
Lib. Intr.  
453.

§. 9. But for that divers contentious persons (deservedly fearing to be bound to the peace or good behaviour, by the Justices of Peace in the Country) 11 Jac. 1  
do



do oftentimes procure themselves to be bound to the peace or good behaviour, in the Chancery or Kings Bench, upon insufficient Sureties, or upon colourable prosecution of some person, who will be ready at all times to release them at their own pleasure; whereupon His Majesties Writ of *Superfedeas* is often directed to the Justices of Peace, &c. requiring them to forbear to arrest or imprison the Parties for the causes aforesaid; by means whereof the said contentious persons do greatly disturb their Neighbours, and affront the Justices of Peace, to the evil example of others; therefore it is enacted by the Statute made 21 Jac. cap. 8. That all Writs of *Superfedeas* to be granted by or out of either of the said Courts of Chancery, or Kings Bench, shall be void; unless such process be granted upon motion in open Court, and upon such sufficient surety as shall appear unto the Court, upon Oath to be assessed at 5 l. Lands, or 10 l. in Goods in the Subsidy Book at least, &c. And unless it shall also appear first unto the said Court, that the process of peace or good behaviour, is prosecuted against him or them, desiring such *Superfedeas*, *Bona fide*, by some party grieved in that Court, out of which such *Superfedeas* is desired to be so awarded and directed.

“ Mes coment le *Superfedeas* serra void per ascun. des defectz ou raisons  
“ avandits uncore ( see les Justices de Peace en pais doient surceaser sur deliv-  
“ ry de ces aleux.

“ Si garrant pro pace soit grant vers un que ne Ossa appeare al Sessions pur  
“ feare de auter arrest, &c. son remedy poit este in deux manners, sc.

1. Devant que soit lye per le Justic. de peace en pais, il poit doner Surety par les peace in le Chancery, ou in Banco Regis, & dilonques avera *Superfedeas* ut supra. Et donque il ne serra lye per les Just. de peace.

2. Apres que est lye per les Just. de P. en pais, semble n'ad auter remedie, mes daver Certiorari ( hors del Chancery, ou Banco Regis ) de remover la Recognisance price per le Justic. de peace, &c.

Now concerning the Recognisance for the Peace. CHAP. CXIX.

**T**His Recognisance which the Justice of Peace taketh for the keeping of the peace, is rather of congruence, than by any expresse authority given them, Fitz. 82. a. 7 H. 4. 34. accord. §. 1.  
Recogni-  
sance.

And this Recognisance for the peace, if the Justice of Peace doth take it by force of the Writ of *Supplicavit*, then he ought to execute it, and to do in all things as the Writ directeth him. But where such Writ prescribeth not the sum, &c. or such like, that resteth in his own discretion.

Lamb. 103 But if he taketh the Recognisance *ex officio*, and by force of the Commission; ( and so as a Judge, and not as a Minister ) then it resteth in the discretion of the same Justice of Peace, wholly to appoint and allow the number of Sureties, their sufficiency in Goods or Lands, the sum of money wherein they shall be bound, and to limit the time how long the party shall be bound, and such other circumstances.

7 H. 4. 34. In the Book 7 H. 4. fol. 34. a. you shall find the principal to be bound in 1000 l. and four Sureties; every of them in one thousand marks before Justices of Peace, and for the keeping of the peace. §. 2.  
Sureties  
and sum.

11. Im. 18. *Quere*, if a Justice of Peace may not examine upon their Oaths the Sureties concerning their sufficiency: it seemeth to be the usage in the Courts at *Westminster*, and M. Crompton saith, that the Justices of Peace in their Sessions may do it, *Crompt. 194.*

The

The most usual manner, and safest way for the Justice of Peace, is, to take two Sureties at the least ( and those Subsidy-men ) besides the party himself, and to bind them by Recognizance to the King, *viz. Domino Regi*: And it must always be for the keeping of the peace.

And yet by the opinion of M. Marrow (who was in the time of King H. 7.) a Justice of Peace might have taken this surety by a gage pawned only to him.

Also ( by his opinion ) a Justice of Peace might have taken this surety by an obligation made to himself, by the name of Justice of Peace.

Yet if a Justice of Peace had enjoyned a man upon pain of 20l. to keep the peace, this had been nothing worth: but in this case and the former two cases, and the like, this one general ground or reason may be given for all, *sc.* that a man cannot be bound to the King, but only by matter of Record, and therefore such surety taken by gage or obligation, or such injoyning of the peace, seemeth nothing worth to bind the party. Fitz.N. Br  
61 D.

§. 3.  
*he form.*

Besides, by the Statute 33 H. 8. c. 39. there is a plain law made (in these and the like cases) which willeth, that all Obligations, &c. which shall be taken in any wise for the King, shall be made in the Kings name, and by these words, *Domino Regi*: And if any person shall make or take any Obligation (or Recognizance to the Kings use in any other manner) he is punishable by imprisonment at the Kings pleasure, &c. P. Ac.  
comp. 11

§. 4.  
*Time.*

A Justice of Peace may take a Recognizance, and thereby may bind the party to keep the Peace for one year, or for a longer time ( by his discretion ) yea, he may bind the party during his life upon reasonable cause: and this the Justice may do, either by his own absolute authority, or upon complaint to him made, and upon good cause shewed; as, if the Offender be a common Barreter, a Riotter, or else in the Justices conscience a dangerous person: but if such surety be so taken during the Offenders life, the Justice of Peace can never release that afterwards, and therefore the Justice must be well advised how he granteth such surety. Mar. 1626.

If the Recognizance be made to keep the Peace (generally) without any time or day limited, it shall be construed to be during the Parties life, *Lambert*, 113.

§. 5.  
*Recognizance.*

A Justice of Peace intending to take a Recognizance for the peace, and yet maketh no mention there ( nor in the condition thereof ) that it is for the preservation of the peace, it seemeth to be void, as being taken *coram non Judice*: for a Justice of Peace hath no authority to take a Recognizance generally, but for matters concerning his Office specially. Lamb. 109

If the Recognizance be, that the party bound shall not beat nor maim *A.* yet it is not good, because it ought to be for the keeping of the peace (generally) and the peace may be broken by burning the house of *A.* or the like. Lamb. 106

If the Recognizance do not limit any time of appearance for the Conuor, but be generally to keep the peace; yet it is good, for the time of appearance is referred to the discretion of the Justice, and the chief scope is, the keeping of the peace. *Marrow*. Ibid.

Also ( by his opinion ) if the Recognizance do limit a time of appearance, but herein is no person named, before whom the party so bound shall appear, then may he appear (in any place out of the Sessions where he will) before that Justice of Peace which took the Recognizance. *Ibidem*.

But in the two last cases, if a Recognizance should be taken in such manner at this day, I should think it safe for the party to appear at the next sessions for the peace, and there to record his appearance. See more *postea*, *sub hoc titulo*.

If

If the Recognizance be to appear before the Justice of Peace within forty days, next after the date or taking of the Recognizance, and before the end of the forty days, a General Sessions of the Peace shall be holden, &c. The Party now ought to appear at the same Sessions, *Crompt. 123.* See the like matter, *Br. Condition 280.*

Also, if these words be in the Recognizance, *sc.* That he shall appear before the same Justice, & *sociis suis*, then must he appear at the next Sessions.

*Crompt.*  
141.

*P. Just.*  
106.

If the Recognizance be to appear at any other Sessions after (and not at the next Sessions) yet the Recognizance is good; and yet by the Statute of 3 H. 7. c. 1. It is now Enacted, That every Recognizance taken for the Peace, by the Justice of Peace, and *Ex Officio*, shall be certified (*sc.* Sent or brought in) at the next Sessions of the Peace, and there delivered to the *Custos Rotulorum*, that the Party so bound may be there called; whereby it may seem that every Recognizance taken for the Peace now, ought to be, to appear at the next Sessions.

*Lamb. 107*

If the Recognizance be in twenty pounds to be levied of his Lands only, or of his Goods only, yet it is good; and this word [only] may seem void: For the acknowledgment of the Recognizance (before a competent Judge) both maketh it a debt, and implieth the ordinary means of Law to come unto it: See hereof *Postea, tit. Recog.*

If the Recognizance be to keep the Peace towards the King, and all His People, but not towards any person certain, it seemeth good.

*F. N. E.*  
80. g.  
*Crompt.*  
141.

So if the Recognizance be to keep the Peace towards *A.* only, it seemeth good, or to keep the Peace towards *A.* and his servants, without being bound toward the King and all His Subjects, it seemeth good.

But the best form is to bind the Party to keep the Peace towards the King and all His People; for first the words of the Commission are to find Surety, *Erga nos & Populum nostrum*: And again, the common usage is so. And besides, it may otherwise prove dangerous to the Party who hath cause to crave this Surety of the Peace; for the other Party who shall give me just cause to crave this Surety against him (because he will not be bound to the Peace towards me) he will perhaps pray to bind himself to the Peace to *A.* who is his companion, and then if the Justice of Peace shall so bind him, then may he and *A.* go before another Justice of Peace (and that peradventure within one week) and there *A.* may release him of the Peace, and so (I trusting that he is still bound) may be after beaten, maimed, or slain by him, or by his procurement.

So then, though the Recognizance being taken in any manner or sort aforesaid, may prove sufficient to bind the Party to the King; yet peradventure it will not excuse the Justice of Peace from blame, and therefore it is safest for the Justice of Peace to follow the received Form.

The Form of the Recognizance for the Peace. See *postea, tit. Recogni-* *Recogni-*  
*zance, c. 123.* *zance to be*  
*forfeited.*  
*§. 6.*

The Recognizance for the Peace, being thus taken, if it were by virtue of the Writ of *Supplicavit*, the Justice ought to return the Writ, and to certify (under his Seal) his doing therein into the Court from whence the *Supplicavit* proceeded; and he may also send such Recognizance (so taken by him) with his Certificate, or else he may keep the Recognizance in his hands still, until he shall receive a *Certiorari* out of the *Chancery*, directed to him for removing of this Recognizance. See more *sub hoc tit. Postea.*

*3 H. 7. 7.*  
*P. Just.*  
106.

But if this Recognizance for the Peace were taken by the Justice of Peace *Ex Officio*, then the Justice of Peace ought to certify (send or bring the Recognizance to the next Sessions of the Peace, so that the Party bound may



be called thereupon; and that if the Party make default of appearance, the same default may be then and there recorded. See 2 H.7. fol. 1.

§. 7.  
Process.

If a Man do forfeit his Recognizance (either for default of appearance, or for breach of the Peace) the Justices of Peace may not Award any Process for the Forfeiture thereof, but must certify the Recognizance, with the cause of the Forfeiture, into some one of the Kings Courts at *Westminster*, *sc.* into the *Chancery*, *Kings Bench*, or *Exchequer*.

Recogni-  
zance for-  
feited.

And note, that the said Recognizance it self, with the Record of such default of Appearance, or other Forfeiture, shall be sent and certified into the *Chancery*, *Kings Bench*, or *Exchequer*, that from thence Process may go out against the Party; and so ought it to be, if it be presented by the Jury or great Enquest, that the Party hath forfeited his Recognizance by breach of the Peace, *Lamb. 570.*

Certified.

If the Justice of Peace shall not certify such Recognizance (taken for the keeping of the Peace) at the next Sessions, the said Statute of 3 H.7. 1. limiteth no penalty; and yet see *Brook, tit. Peace 11.* That the Justice shall forfeit 10 l. if he do not certify the Recognizance of the Peace at the next Sessions, but Mr. *Brook* there mentioneth the Statute of 3 H.7. c.3. Which Statute of 3 H.7. c.3. was only for Bailment of Prisoners, and certifying the same, and so seemeth to mistake the Statute. *Vide Fitz 251.*

If he which demanded the Peace shall release the Peace, before the said next Sessions, then it may seem, though the Justice of Peace shall not certify the Recognizance, that the Statute is not transgressed or offended; for it hath been holden that the Party shall not be called in such case upon his Recognizance. *Tamen quare inde & vide hic postea.* But howsoever, it is better to certify the Recognizance, for peradventure it was forfeited before the Release made.

§. 8.  
Recogni-  
zance re-  
moved.

Also, he that demanded this Surety, 'or he that is bound to the Peace', may by a *Certiorari*, remove such Recognizance into the *Chancery* or *Kings Bench*, before the Justice hath certified the same to the Sessions. And so in Case the Justice shall not certify the same thither. *Fitz 81.* 'And then the party bound, need not to appear.' See *hic postea.* the Form of the Justices return of such *Certiorari*, and of the Recognizance.

§. 9.  
New Sure-  
ty.

If the Justice of Peace were deceived in the sufficiency of the Sureties, the same Justice of Peace, or any other Justice of Peace, may afterwards compel the Party to find and put in other more sufficient Sureties, and may take a new Recognizance for the same; for that the Precept is, *Ad inveniend. sufficientem securitatem.* But if the Sureties die, the Party principal shall not be compelled to find new Sureties. See more *Postea, sub hoc tit. & postea, tit. Bailment. cap. 114.*

*What things shall discharge this Recognizance (of the Peace) or the Party of his Appearance at the Sessions. CHAP. CXX.*

§. 1.  
Supersedeas.

Whether a *Supersedeas* out of the *Chancery*, &c. shall discharge the Party of his Appearance. See *antea, sub hoc tit. c.69.*

He which is bound to the Peace, and to appear at a certain day, he must appear at that day, and Record his Appearance although he who craved the Peace, cometh not in to desire that it may be continued, otherwise the Recognizance shall be forfeited.

§. 2.  
Proclama-  
tion.

And if a Man be bound to keep the Peace towards the King and his People, but not towards any person certain, and to appear at such a Sessions, the Court at that Sessions may make Proclamation, That if any Man can shew

shew cause, why the Peace granted against such a one shall be continued, that he speak, &c. And if no person cometh to demand the Peace against him, or to shew cause why it should be continued, then the Court may discharge him. But if a Man be bound as aforesaid, and especially to keep the Peace, towards *A.* there, though *A.* cometh not in to desire that the Peace may be continued, yet the Court by their discretion shall do well to bind him over till the next Sessions, and that may be to keep the Peace against *A.* only, if they shall think good: For it may be that *A.* who first craved the Peace is sick, or otherwise letted, so as he cannot come to that Sessions to demand the continuance of the Peace further; and in some places in such case, they ordinarily use to bind him over for two or three Sessions together, by order among themselves.

And yet by the course of the *Common Pleas*, one that was imprisoned for the Peace (being removed thither by a Writ of Priviledge) was there discharged, for that he which demanded the Peace, came not at the day (of the Return of the Writ) to pray continuance thereof. See more *antea*, *sub hoc tit.*

If the Justice of Peace shall not certifie the Recognizance to the Sessions, yet the party ought to appear, and to record his appearance. See such a matter of a Sheriff, who took Bond of one to appear in the Common Bench, at a certain day, &c. although the Sheriff return not his Writ, &c. yet the Party must appear to save his Bond. *Vide* 18 E. 4. 18. for this last case.

If the Party that is bound to appear, be so sick that he cannot appear, nor by any means travel at the day, yet it seemeth his Recognizance in strictness of Law is forfeit, and so it is by the course of the Courts at *Westminster*, *ut dicitur*; yet in this case, upon the due proof of such his sickness, I have known the Justices of Peace (in their discretion) have forbore to certifie or record such forfeiture or default; and that they have taken Sureties for the Peace of some Friends of his present in Court, until the next Sessions; for that the principal intent of the Recognizance was but the preservation of the Peace. But *quare*, how this is warrantable by their Oath; besides, the Party so bound, might (by a *Certiorari*) have removed his Recognizance into the *Chancery*, or *Kings Bench*, before the day of his appearance, and then he should not have needed to appear at the Sessions, for that the Justices there should have no record whereupon to call him.

§. 3.  
Appearance

But the Civil Law in such Cases is more favorable; for with them the Rule is, *Citatus ad locum non tutum, non ardeatur comparere*: As if the Plague shall be hot in the place or Town where the Party is to appear, or where their Court is held. This is a good excuse in their Law, *ut dicitur*.

So if there shall be any other inevitable accident, whereby the party shall be hindred, as by any great Snow, inundation of Waters, or by any fall, or other hurt or sickness, whereby the party is in danger of death: In these and the like cases, the Civil Law doth dispence with defaults, referring these things *Arbitrio Judicis*.

See Mr. *Brook*, *tit. Saver de Default*. 17, 28, 45, & 48. 'and divers other Books, shewing, That the Common Law doth allow divers Cases to save a default of not appearing in Court, the same being pleaded and proved, as imprisonment, inundation of Waters, Tempest, and Sickness. *Vide lib. Intr.*

If the Husband be bound, that he and his wife shall appear at such Sessions, and that they shall keep the Peace in the meantime, &c. and at the day the husband doth appear, but not his wife. Here Mr. *Crompton* saith, the

§. 4.  
Baron &  
Femme.

Recognizance is not forfeit ; for if there shall be cause to continue this Surety of the Peace against the Husband and Wife still, the Husband shall be bound, and not the Wife ; and therefore the Wives appearance seemeth not greatly material, *Tamen quare & vide Fitz. Forfeiture 17. 8 E. 2.*

§. 5.  
Release.

If a Man be bound to the Peace during his life, or generally, without any time or day limited, in such case neither the King, the Justice of Peace, nor the Party can discharge this Recognizance, during the life of the party so bound, by release, or otherwise. *Br. Peace 17.*

Also it hath been holden, that the Justice of Peace who upon his own discretion, hath compelled one to find Surety of the Peace upon a certain day, and hath taken Recognizance for his appearing, &c. may upon the like discretion release the same before that day ; and that such a Release will discharge the Recognizance taken by that Justice, if it were not forfeited before, and will also discharge the party so bound of his appearance ; for that here all this business depends only upon the discretion of the Justice of Peace who bound him. See *Fitz. Just. de P. fol. 9. Lamb. 113. & Cromp. 139:*

Again, it hath been holden, if a Justice of Peace shall grant the Peace at the request of another (*sc.* at the Suit of *A.*) and the Recognizance be taken to keep the Peace against *A.* only, then (before the next Sessions) may *A.* only release it (and none other) and that Release being certified at the next Quarter Sessions, will discharge the party so bound of his appearance, so as he shall not be called upon his Recognizance ; for that release being so certified, is now become of Record as well as the Recognizance.

If the Recognizance were to keep the Peace, *Versus cunctum populum* & *præcipue versus A.* yet may the same *A.* release it : For although this may seem popular, and that all others shall have interest therein as well as *A.* Yet, as it appeareth, by the word *præcipue*, it was specially taken for his safety : But the contrary was holden by all the Justices, *21 E. 4. 48. sc.* That the party at whose Suit the same was granted, cannot release the same. And Mr. *Lambert* alloweth best of that opinion, nevertheless the usage now is, and long hath been, as is aforesaid, as appeareth by Mr. *Brook tit. Peace 17.*

But (in these former cases) although this Surety of the Peace be released, and the parties agreed, yet the Recognizance shall not be cancelled by the Justice of Peace, for peradventure the Recognizance was forfeited before such Release made : And therefore the Justice of Peace shall do best, nay, ought to certify such Recognizance, together with the Release, the next Quarter Sessions.

The Form of the Release of the Justice of Peace. See *postea, tit. Release.*

The Form of the Release of the Party. See *Ibidem.*

Note, it hath been holden that the party that first demanded the Peace, might release the same before the same Justice of Peace that took the Recognizance, or before any other Justice of Peace.

Note also, that to release such Surety of the Peace by Deed under his Hand and Seal, is nothing worth.

But yet it is now holden, That neither the Justice of Peace, nor the Party can discharge the Recognizance of the Peace by their Release out of the Sessions. For first, the Recognizance is made to the King, and therefore none but the King can release or discharge the same. Secondly, the Recognizance is taken for the appearance of the party, &c. (as well as for his keeping of the Peace) and the release of the Justice, or of the Party, cannot discharge the appearance of the party bound. And therefore notwithstanding that the Justice of Peace, out of Sessions, shall make or take any Release of the Peace,



Peace, yet it shall be safe for the party bound, to appear for the safeguard of his Recognizance; and upon the Certificate made by the Justice of Peace to the Sessions of such Release, the Conusor shall be there discharged (at least) against the party who craved the Peace.

And in truth, the appearance of the party bound, seemeth requisite, notwithstanding any Release made. First, for the safeguard of his Recognizance, as aforesaid: Secondly, that others may object against him (in the open Sessions) if he hath in any sort broken the Peace, so as he may be there indicted upon the same, &c.

Note also, the King can in no case Release or Pardon the Surety of the Peace, nor such Recognizance (taken in the behalf of any of His Subjects) until it be forfeited, for the mischief that may come to the party thereby, but being forfeited, then the King, and none other may Release and Pardon the Forfeiture. §. 6.  
Discharge.

But the death (or resignation) of the King dischargeeth this Surety of the Peace taken by His Subject: For the Recognizance is to keep the Peace of the King (then being) and when he is dead, &c. It is not his Peace. *Br. Surety 20.*

Also the death of the Recognisor (*sc.* of the Party Principal that is bound) dischargeeth this Surety of the Peace and the Recognizance. See *21 Ed. 4. 70. & 15 H. 7. 2. & 13.*

Also the death of the party, at whose Suit the Peace was taken, dischargeeth the Recognizance, if it were to keep the Peace against him alone.

But yet in these three former cases, such death shall not discharge the Recognizance, if it were forfeited before; and therefore it shall be best for the Justice of Peace to send to the next Sessions, such Recognizance (notwithstanding such death) else the King may be defrauded of a Forfeiture, if any were before.

The death of the Sureties shall not discharge the Recognizance, neither shall the Party Principal be compelled to find new Sureties after their death; for if the Peace be broken after their deaths, their Executors shall be charged therewith; and there is no mischief by their death; yet *alii contra ibid. sc.* that the Principal shall be compelled to find new Sureties.

Also such Surety for the Peace may be discharged by a *superfedeas* made by another Justice of Peace of that County, or by a *superfedeas* out of the *Chancery*, or *Kings Bench*.

If the King and the Recognisor be at Issue upon the Breach of the Peace, and the King waves the Issue; yet is not this Recognizance discharged, but remaineth in force, and may be sued again upon a new breach of the Peace afterwards.

*What Act shall be (or makes) a Forfeiture of the Recognizance taken for the Peace. CHAP. CXXI. V. 72.*

**W**Hatsoever act is a breach of the Peace, the doing, threatening, or intending thereof, against the person of another being present, is a Forfeiture of his Recognizance. §. 1.  
What is a  
breach of  
the Peace

And therefore first, this breach of the Peace may be committed by using any fearful or threatening Speeches to the Person of another; therefore all menacing, or threatening to kill or beat another to his face, is a Forfeiture of his Recognizance; otherwise, if the party so threatned be absent. And yet if the party so bound shall threaten to kill or beat *A.* who is absent, and after shall lie in wait for him to kill, or beat him. This is a Forfeiture Words.

ture of his Recognisance, without any threatning, assault or affray to the person, 22 E. 4. 35. *Cromp.* 135.

*Assault.*

So Assaults, *sc.* to strike at, or offer to strike at a Man, although he never hurt or hit him; this is an Assault, 22 *Aff.* Pl. 60. And this is a Forfeiture of this Recognisance. See *Cromp.* 137. b. & 40 E. 3. fol. 40.

Much more all affrays, or violent and malicious batteries, strikings, beatings, woundings, or other mis-intreatings of the person of another, are Forfeitures of this Recognisance.

The difference of these three are, menacing beginneth the breach of the Peace, assaulting increaseth it, and battery accomplisheth it.

Or thus, Battery, is the wrongful beating of another, *Fi.*

Assault is, when one unlawfully sets upon the person of another, offering to beat him, although he beats him not, or striking at him, though he strikes him not, *Ibid.*

Hither also belongeth lying in wait, besetting his Mansion-house, and not suffering his servants to go in and out, &c. *Fi.*

Menaces, are threatning words to beat another, or the like, for fear whereof he dares not go about his business. *Ibid.*

For breaches of the Peace, without word or blow given, as to go with weapons, or company unusually, which be in *Affrey del pais.* See Page seq.

§. 2.  
*Command.*

If he that is bound, do but command or procure another to break the Peace, and that it be done indeed; this is a Forfeiture of this Recognisance. *Br. Peace* 20.

Also false imprisonment, or arresting of another without Warrant, is a Forfeiture of this Recognisance. Now false imprisonment, is any unlawful restraint of Liberty. *Fi.*

So to thrust another into the Water, whereby he is in danger of drowning, is a Forfeiture of this Recognisance.

So to ravish a Woman against her will.

So to commit Burglary, Robbery, Murther or Man-slaughter (all which are to the person of another) or to procure the same; all and every of these are Forfeitures of this Recognisance.

So to do any Treason against the Person of the King; this is a breach of the Peace, and a Forfeiture of this Recognisance: For although the words of the Recognisance usually be, *Quod gerat pacem erga cunctum populum Domini Regis, & precipue erga A. B.* (and is not *erga ipsum Dominum Regem & cunctum populum, &c.*) Yet because this fact is done against the Head of the Body of the whole Realm, it is to be adjudged a prejudice and hurt, *Ad cunctum populum*, and a breach of the Peace in the highest degree.

But note, That the Act which must make a Forfeiture of a Recognisance, for the Peace must be done or intended to the Person of another (by the opinion of Mr. *Marrow.*) And the Book of 2 H. 7. importeth as much, saying, That this Surety of the Peace is not broken without an Affray, fighting, beating, or the like. *Mar. Jett. 2 H. 7. 20.*

And yet to be riotously assembled, is a breach of the Peace, and a Forfeiture of this Recognisance, 'for that it is *in terrorem populi.*' Nay, if two Justices of Peace shall record a Riot upon their view (against a Man so bound to the Peace) although it were no Riot, &c. yet he cannot plead *Not guilty* in a *Scire facias* upon his Recognisance. *Marr. Lambart.*

Also to wear Armor, or Weapons not usually worn, or to go with an unusual number of Attendants, seem also to be a breach, or means of breach of the Peace, and a Forfeiture of this Recognisance for the Peace; for they strike

strike a fear and terror in the people, and be in *Affray del pais*. See *Br. Surety 12 & hic*.

He that is bound to the Peace, ought to carry himself well in his Behavior, and company. See *Ant. sub hoc tit. Et Post. tit. Surety for the Good Behavior*.

Yet the having of weapons or company unusual, are in some cases allowed, and lawful, and are no breach of the Peace. See hereof *Postea, tit. Posse Comitatus, & Postea, tit. Riots*.

Also though Assaults and Batteries be for the most part contrary to the Peace of the Realm, and the Laws of the same, yet some are allowed to have a natural, and some a civil power (or authority) over others; so that they may (in reasonable and moderate manner only) correct and chastise them for their offences, without any imputation of breach of the Peace; yea, they may (by the Law) justify the same; and so in such cases the beating or battery of the person of another, maketh no breach of the Peace; but the manner of the battery only doth make the breach of the Peace.

And therefore the Parent (with moderation) may chastise his Child within age.

So may the Master his Servant, or Apprentice, for their evil service.

So may the School-master his Scholars.

So may a Gaoler (or his Servant by his command) his unruly prisoners.

So may any Man his Kinsman that is mad, &c. And none of these shall be in peril, therefore to forfeit any Recognisance of the Peace.

Note, That the Master may strike his Servant with his hand, fist, small staff, or stick, for correction; and though he do draw blood thereby, yet it seemeth no breach of the Peace, as appeareth by the Statute of 33 H. 8. cap. 12.

And where the Servant shall be negligent in his service, or shall refuse to do his work, &c. There the Master may chastise his Servant for such negligence or refusal; so as he doth it not ouragiously.

But if the Servant shall depart out of his Masters service, and the Master happen after to lay hold of him, yet the Master in this case may not beat or forcibly compel his said Servant against his will to return, or tarry with him, or do his service; but either he must complain to the Justices of Peace for his Servants departure, or he may have an Action of Covenant against his Servant, if being required to do his service he shall refuse it. See *antea, tit. Laborers*.

And as the Master without the breach of the Peace cannot by beating or force, compel his Servant to serve him against his will; no more can a Lord or Guardian in Chivalry compel his Ward by beating or by force to come unto him, or tarry with him against his will.

Also the School-Master, with a Rod, may chastise his Scholar which is careless and negligent in Learning, or that shall abuse his School-fellows, or for other the like occasions.

Also it is lawful for the Parents, Kinsmen, or other Friends of a Man that is mad or frantick (who being at liberty, attempteth to burn an house, or to do some other mischief, or to hurt himself or others) to take and put him into an house, to bind or chain him, and to beat him with Rods, and to do any other forcible Act to reclaim him, or to keep him so as he shall do no hurt. *Br. F. Imp. 35.*

Also if a Constable, Sergeant, Bailiff, or other Officer of Justice, or any other being of their Company, for the better executing of their Office, shall be forced to strike any person that will not yield to their arrest, or that shall

Ex. 21. 20.  
21.

Plow. 12.

P. Fighting.

38 H. 6. 25.  
Br. Faux.  
Imp. 17.

El. 4.  
P. Labor. 6.

38 H. 6.  
25.

21 Ed. 4. 6.  
Lib. Intr.  
613.

21 Ed. 4.  
45.  
22 Aff. p.  
56.

Lib. intr.  
612.  
Stamf. 13.

14.  
21 H. 7.  
39.

S. 3.  
Battery justifiable.

Master and Servant.

S. 4.  
An Officer.



shall resist, or flie from their arrest, they shall not be in any danger to forfeit any Recognizance of the Peace, by any such assault or striking, but may well justifie such Act.

In defence  
of any per-  
son.

Also it is no breach of Peace for any private Man to beat, strike, or wound another in defence and safeguard of his own person from killing, wounding, or beating, but it is a thing justifiable. And in Action of Trespas De assault & battery, the Defendant may plead, *De son assault demesne, &c.* *Qua il fait ceo in defence luy mesme, enconter le assault del Plantiff, &c.* And yet by others, if another shall assault me, if I may escape with my life, or without being wounded, maimed, or hurt, it is not lawful for me to beat or wound the other who first made the assault, but I must first flee, or go from him so far as I can. 25 E. 3. 42. 2 H. 4. 8. 33 H. 6. 18. Br. Trn's 28. 71 Cro. 137. hic.

*Sed vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ.*

*Non ad sumendam vindictam, sed ad propulsandam injuriam.* Co. l. 162.

By the Civil Law he shall not be said to have done a wrong, who incontinently for his safeguard, after the same manner whereby he is assaulted, doth defend himself, as when a Man is assaulted by weapons, he may resist with weapons: But if he do exceed measure, in repelling an injury; as if being wronged in words, he shall resist with weapons, and by such resistance do beat or wound the other party, he which is so beaten or grieved, may have his action, and shall recover damages, &c.

And to prescribe some temper and moderation in the resisting of verbal, or actual injuries, one hath these Verses:

*Res dare pro rebus, pro verbis verba solemus,*

*Pro busis busas, pro trusis reddere trusas.*

Things must be recompens't with things, buffets with blows,

And words with words, and taunts with mocks and mows.

'Or rather by the Law of God and Nature, we should practise this lesson:

'—Per te nulli unquam injuria fiat,

'Sed verbis aliisque modis fuge ledere quemquam,

'Quod nulli nolles, aliis fecisse caveto:

'Quodque tibi velles, aliis prestare studeto.

'If one Trained Soldier hurt another by mischance, and not willingly, or by negligence, it is excusable in an Action of Trespas or Assault. Hobart's Reports, Weavers case, p. 189.

If two, or more, do agree together to play at Barriers, Backsword, Bucklers, Foot-ball, or such like, and one of them doth wound and hurt another, the Party hurt, shall not have an Action of Trespas therefore against the other; for that it was by consent, and to try their valor, and not to break the Peace. Fitz. Bar. 244.

Yet if such a Man were before bound to the Peace, such act seemeth to be a Forfeiture of his Recognizance. See Br. Cro. 229. for although such sports be suffered, yet they are not lawful.

§. 5.  
In defence  
of others.

Also it is no breach of the Peace, for a Man to beat him that doth assault and would beat him, wound or evil intreat his Wife, Father, Mother, or Master, but is justifiable.

So if the Wife shall beat him, that shall assault, and would beat or evil intreat her Husband.

So if the Father, or Mother, shall beat him that doth assault, and would beat or evil intreat their Child, being then within age, and not able to defend it self.

But

But though the Servant may lawfully beat him that doth assault, and would beat or evil intreat his Master or Mistres; yet the Servant cannot justifie the beating of another, in defence of the Father, Mother, Brother, Sister, Son, or Daughter of his Master or Mistres, for he oweth no obedience or duty to any of them. See *Fitz. Bar.* 73. & 102.

*P. R. 4*  
*P. Justific.*  
*3.*  
*Lamb. 132*  
*Crompt.*  
*136.*  
By some opinions, the Master cannot justifie the beating of him that doth assault and would beat his Servant: But the Master with a Sword, Staff, or other weapon, may defend his Servant assaulted from being beaten, in respect of the loss of his Service. Yet Mr. *Lambert* and Mr. *Crompton* are of opinion, That the Master may beat another in defence of his Servant. But *9 E. 4. Fitz. Bar.* 102. *contra.*

*Lamb. 132*  
Neither can the Fermor or Tenant justifie such an act in defence of his Landlord, nor a Citizen, &c. in defence of the Major (or Bailiffs) of the City, or Town Corporate, where he dwelleth.

And yet where the life of any person is in danger by beating of another, there any stranger may lawfully resist it, and that with force, and beating of him which offereth such violence. *Vide 21 H. 8. 2. b. hte.*

*9 E. 4. 21.*  
*19 H. 6. 31.*  
*65.*  
*L. b. Intr.*  
*611.3*  
Also the Law doth tolerate a Man to beat another for the preservation of his Goods; and therefore he that shall attempt by force and violence to take away my Goods wrongfully from me, whether they be Goods whereof I have a lawful property, or such Goods whereof I have only a possession by the bailment of another: I may justifie to defend the same by force; and if I shall hurt or beat such a person, it is no breach of my Recognizance for the Peace. *Quere*, If I shall wound him by such beating, that is not justifiable; but if I kill him, it is Felony. And in both these last Cases, it is a breach of the Recognizance. See *hit.*

If another Man will take away my Goods, I must first lay my hands upon him, and disturb him; and if he will not leave, then I may beat him, rather than he shall have or take away my Goods. *Fi.*

*10 Ed. 4. 6*  
*5 H. 4. 9.*  
*11 H. 5. 33*  
The same Law is in every case, where another shall attempt by force to take away, or to put me out of possession of my Land, Freehold, Copyhold, or Lease, or to stop or turn my lawful High-way, or my ancient River or Water-course leading to my Mill. In these, and the like case, if I shall disturb him therein, whereupon he doth assault, and attempt to beat me, I may justifie to beat him again, as well in defence of my person, as of my possessions, but not to kill him.

The same Law is also in every case, where an offender is by order of Law punished with Whipping, Stocks, Pillory, or otherwise, for any offence by him committed, contrary to the Laws or Statutes of the Realm: There is no Peace broken, nor any Recognizance of the Peace forfeited by him or them, which shall lawfully execute any such punishments.

*Lamb. 132.*  
Note farther, that there are divers things which may be done against the Peace, and divers Offences, for which an Indictment *contra pacem* will lie; and yet the committing or doing of such offence or act, shall be no forfeiture of the Recognizance for the Peace: For that the act that shall breed a Forfeiture of such a Recognizance, must be done or intended unto the person, as aforesaid, or *in terrorem populi.*

Therefore to enter into Lands where he ought to bring his Action, or to disseise another of his Lands.

*Marr. 1c8.*  
*7.*  
Or to enter into Lands or Tenements with force, being without offer of violence to any Mans person, and without publick terror, *Crompt.*  
*136.*

Or to do a Trespass in another Mans Corn or Grass.

Or to take away another Mans Ward.

Or

*§. 6.*  
*In defence*  
*of my*  
*Goods.*

*§. 7.*  
*Possession.*

*§. 8.*  
*In Execution*  
*of Ju-*  
*stices.*

*§. 9.*  
*Where*  
*things done,*  
*Vi & Ar-*  
*mis, break*  
*not the*  
*Peace.*

Or to take away another Mans Goods wrongfully, so it be not from his person.

Or to steal or take another Mans Horse, or other Goods feloniously, <sup>Marr. l. 7.</sup> being not from his person.

All these, and the like, be breaches of the Peace, and yet these will <sup>7 H. 7. 8.</sup> make no breach of this Recognizance, nor breach of the Peace within the meaning of the Commission of the Peace.

Note, that if a Man be bound in such a Recognizance for himself and his servants, if any one of them break the Peace, the whole Recognizance is forfeited. *Et sic in similibus.*

Note also, that the Sureties may plead that the Party Principal hath not broken the Peace, although upon issue the same shall be found against the said Principal; for they are strangers thereto. *Fitz. Averment.* 46.

Now concerning the Writ of *Supplicavit*. CHAP. CXXII.  
*Vide 73.*

§. 1.  
*Supplicavit.*

**T**He Forms of this Writ, out of the *Chancery*, are of divers sorts, as you may see, *Fitz. N. B. 80. d. & Register. 89.*

§. 2.  
*To whom directed.*

By which Forms of the Writ it appeareth, that it may be directed to the Justices of Peace, or to one of them; or to the Sheriff, or to every of them, to cause the Party that is to be bound, to come before him or them, to find Surety of the Peace. And this Writ may be, that the Principal shall be bound in such a sum, and the Sureties in such a sum certain, (and that may be in what certain sums the Demandant will) or the sums may by the Writ be referred to the Justice of Peace, &c. with this clause therein contained, *Pro qua respondere volueris.* And the said Writ is further, That if the Party shall refuse, &c. that they shall commit him to the Gaol, *Quousque, &c.* and that when they have taken such Surety, they do certify the Recognizance (which they have so taken) under their Seals, and return the Writ into the Court from whence the same was awarded, and that without delay.

§. 3.  
*Execution of it.*

And for that this Writ is of divers Forms, the Justice of Peace must have a care that he do execute the same in every behalf, as the same Writ shall direct and appoint him.

When the Writ doth refer the sum (wherein the Principal and his Sureties shall be bound) to the Justices, &c. then it resteth in their discretion; but yet it is then safe for them to take good Sureties, and to bind them in good sums, and the rather, when the clause is in the Writ: *Pro qua respondere volueris.*

When this Writ is directed to the Sheriff, and to all the Justices of Peace of that County, and is delivered to any one of them, he only to whom it is first delivered, ought to execute the same Writ (in every behalf,) *sc.* He only shall make a Warrant, &c. returnable before himself, and he only shall take Sureties, and make return thereof (only) without any other.

The Form of a Warrant for the Peace upon a *Supplicavit*. See *postea, tit. Warrants.*

§. 4.  
*Superfedeas*

Also the same Justice of Peace after such Surety taken, may make the Party a *Superfedeas* to discharge him from any other arrest; or to deliver him being in Prison for the Peace, (at any other Mans Suit, as it seemeth.) *Crompt. 237 b.*

The



The Form of such *Superfedeas*. See after *tit. Precedents*.

21 H. 7.  
Br. Peace  
9.

The Party who is attached upon this Writ of *Supplicavit*, cannot go to be bound before any other Justice of Peace, but only before him from whom the Warrant proceeds upon this Writ; neither can another Justice of Peace (by a *Superfedeas*) discharge such a Warrant made by his fellow Justice, by force of this Writ.

9 E. 4. 32.  
F. Faux.  
Imp. 4.

The Justice or Sheriff, to whom this Writ shall be delivered, may §. 5. make a Deputy herein, *sc.* May make his Warrant to the Bailiff, Constable, *Disputation*.

Rolls Rep.  
part 2. p.  
348.

or other person indifferent, to apprehend the Body, or to cause the Party to come before him (the said Justice or Sheriff) to find Sureties, &c. And that if he shall refuse, that then the Constable, &c. shall carry him to Prison, there to remain, until he shall find Sureties; and yet the Writ of *Supplicavit* is to commit the Party to the Gaol, if he shall refuse before the Justices (*Si coram vobis, vel te recusaverit, &c.*) But the Justice or Sheriff cannot give their power to another to take this Surety; for that is a Judicial power which cannot be assigned over: Neither can they make any Deputy therein, but they must take this Surety themselves; and the Bailiff or Constable who apprehended the Body, cannot take this Surety. *Br. Office* 39. & *Faux. Imp.* 34.

"A *Supplicavit* is directed to the Sheriff, and four Justices of Peace, that they or any two of them, shall take a Recognizance; the Writ is executed by two Justices which take the Recognizance, and the Sheriff returns it as taken by them, and good. *Leonards Case, T. 21 Jac. Rolls* *Rep. part 2. p. 348.*

If the Party shall make resistance upon the execution of this Writ, the Officer may take *Posse comitatus*, *sc.* the help of his Neighbors to aid him to arrest such party. See *Postea, tit. Posse Comitatus*, or else the said Justice may make his Warrant to the Sheriff, to apprehend the party, and upon resistance, the Sheriff may take *Posse Comitatus* to arrest the Party.

F. N. B.  
80. d.

He that is to be bound to the Peace, by force of this Writ of *Supplicavit*, out of the *Chancery*, is to be bound against him only that sueth out the Writ, as appeareth by the Form of the Writ aforesaid.

But yet at this day it is used otherwise, and I once received out of the *Chancery* a special Writ of *Supplicavit*, directed *Custodibus pacis, ac vic. & eorum cuilibet*, commanding us to take Sureties of the Party to be bound, *Quod ipse damnum vel malum aliquod alicui de populo nostro, & imprimis eidem Joh. &c.* (that sued out of the Writ) *non fac. nec fieri procurabit.* §. 6. *Recogni-*

F. N. B.  
80. d.

Also by this Writ of *Supplicavit*, the party (against whom the Writ is sued forth) shall be bound to the Peace for ever (if he be taken;) for the Writ containeth or mentioneth, not that he shall be bound to keep the Peace until any certain time, but generally (*ad sufficientem securitatem inveniendam sub pena, &c.*) And therefore to prevent this, the Party (before he be attached) may come into the *Chancery*, and there find Sureties, and be bound until a certain day, that he shall do no hurt, &c. unto the Party that sued forth the *Supplicavit*; and thereupon he shall have a *Superfedeas* out of the *Chancery*, directed to the Justices of Peace, and to the Sheriff, or to one of them, commanding them to surcease to arrest the said Party, or to compel him to find any Sureties, &c. And that if they have arrested or imprisoned him for this cause, and none other, that then they deliver him, &c. *Fitz 18. a.* The Form of the *Superfedeas*, see *Register. 89.* §. 7. *Time.*

F. N. B.  
812.  
Crompt.  
142.

And if the Party against whom this Writ is sued forth, cannot travel, (or else will not travel) to bind himself in the *Chancery*, then he may cause some of his friends to be bound, or to find Sureties in the *Chancery* for him, according to the *Supplicavit*; and thereupon they may purchase a *Super-* §. 8. *Avoidance.*

*Supersedeas* out for him, directed to the Justices of Peace, and to the Sheriff, and by this *Supersedeas*, the Justices and the Sheriff shall be commanded to take also Surety of the party himself, in the Countrey (according to the Writ of *Supplicavit*) that he shall keep the Peace, &c.

§. 9. *Supersedeas* Also, if the party happen to be arrested and imprisoned upon this Writ, yet if he can procure a *Supersedeas* out of the *Chancery*, it seemeth by the words in the end of the *Supersedeas*, that this will discharge him of the arrest or imprisonment.

Now after the Party is arrested and imprisoned (upon this Writ) the means for him to procure a *Supersedeas* out of the *Chancery*, must be :

1. Either to get some of his Friends to be bound in the *Chancery* for him, and they to get a *Supersedeas*, *ut supra*.

2. Or else to get a Certificate to the Lord Chancellor, from three or four Justices of Peace in this behalf, 'Signifying, That the Party Plaintiff 'never demanded the Peace in the Countrey ; and further, That the Plaintiff is a contentious Man, and the other party of good fame : And upon 'such Certificate (*dicitur*) they will either discharge the party, or else grant 'him a *Supersedeas*.

§. 10. *Where.* This Writ of *Supplicavit* is granted (or may be granted) in the *Chancery*, or *Kings Bench*, upon great cause shewed and proved there, and is (or ought to be) granted upon Oath, that the party is in fear, &c. of some bodily hurt, &c. F. N. B. 79. h. Lamb. 86.

But this Writ of *Supplicavit* hath heretofore oftentimes been procured and gotten out rather of malice, and for vexation, then upon any needful or just cause. And Sir Edward Coke speaking of such as maliciously shall purchase out any special *Supplicavit*, or *Latitat*, of the Peace, (and that by fraud and malice, to inforce the other party, *Ad redimend. vexationem*, to give them Money; or to yield them other composition) brandeth them as Barretors, and notable oppressors of their Neighbors; oppressing thereby the poor and innocent by colour and countenance of Law, which was ordained to protect the innocent from all oppression and wrong. Neither was this a wrong only to the party thus maliciously vexed, but also to all the Justices of Peace in that County, taxing them (*tacite*) as though the Demandant could not have justice at their hands in such case, whereas perhaps the Demandant never so much as desired the same at any of their hands. And besides, the said Justices of Peace (having in all likelihood, knowledge of each party, and their behaviors) or any one of the Justices of Peace, might and would, no doubt, yea, and ought to have yielded the Demandant, upon request and just cause shewed to them, as sufficient and good security in the Countrey, every way (as I conceive it) for his safety ; as namely, as many and able Sureties, and better known, and to have been bound in as great sums, and for as long time, if the cause should so require. So as what should move them to seek (with more trouble, charge, and delay to themselves) that security above, which they may have (more speedily, and with less charge and trouble) at home, I see not, but only or chiefly the vexing and oppression of their Neighbors, as aforesaid. And for that, this manner of oppression grew over common ; therefore by the Statute made 21 Jac. 8. It is now Enacted, That all Proceſs of the Peace, or Good Behavior, to be granted out of the *Chancery*, or *Kings Bench*, against any person whatsoever, at the suit of any other, shall be void, unless such Proceſs shall be granted upon motion first made before the Judge or Judges of the same Court, sitting in open Court, and upon declaration in writing upon oath then exhibited, of the causes for which such Proceſs shall be granted ; and unless that such motion and declaration be mentioned to be made Co. 2. 371. See more before in this title. 21 Jac. 8.

made upon the back of the Writ ( the same writing to be there entred of Record. ) And if after it shall appear to the said Courts, that the said causes expressed in such writing, be untrue, then the Court may award Costs and Damages to the party grieved, and may also commit to Prison the Offenders, until they pay the said Costs and Damages.

Now to conclude this business : if the Surety of the Peace be taken by vertue of a *Supplicavit*, then must the Justice of Peace make return of the Writ, and Certificate of his doings under his Seal into the Court from whence the *Supplicavit* did proceed, which may be done in this manner :

First let him write upon the back of the *Supplicavit*, thus :

“ *Executio istius brevis patet in quadam Scheda huic brevi annex.* ”

Then may the Certificate or Schedule be thus, and be filed to the back of the Writ.

“ *Ego Johannes Cotton Miles unus Custod. pacis Dom. Regis in Com. Cantabrig. Certifico. in Cancellar. dict. Dom. Regis me virtute istius brevis mihi p. A. B. in eodem brevi nominatum prim. deliberat. personalit. coram me ( tali die & loco ) venire fecisse T. R. in dicto brevi nominatum ac eundem T. ad sufficientem securitat. & manucaptos pacis inveniendum secundum formam dict. brevis, viz. &c. ( As the Will shall appoint ) compulsi in cuius rei testimonium huic presenti Certificationi meo sigillum meum apposui datum apud C. præd. in Com. præd. 16 Die Januarij. Anno Regn. dict. Dom. nost. Caroli Dei gratia Regis &c. xx.* ”

The Justice of Peace may also therewith send the Recognizance, if he will ; or may keep and stay the Recognizance until a *Certiorari* come to him for it.

And if a *Certiorari* be directed out of the Chancery to the Justice of Peace, for removing of this Recognizance ( because it was not sent up together with the Certificate, as there was no necessity that it should ) then that Writ also may be thus answered.

Write upon the back of the *Certiorari* thus :

“ *Virtute istius brevis ego I. C. miles unus custodum pacis Dom. Regis Com. C. tenorem securitat. pacis de qua in hoc brevi fit mentio, or unde infra fit mentio dicto Domino Regi in Cancellar. suum sub sigillo meo, distinte & apparte milit. præd. patet in Scheda huic brevi f. confut. &c.* ”

And then write the Recognizance *verbatim*, in this manner here under following, and thereto set your Seal.

“ *Memorandum quod 16 die Januarij. ( reciting the whole Recognizance to the end ) In cuius rei testimonium ego præd. I. C. sigillum meum apposui dat. &c.* ”

And file this Schedule (or note of the Recognizance) to the back of the *Certiorari*.

The form of the *Certiorari*, you may see F. N. B. 81. 82. c. *Vide postea, tit.*

F.N.B.11. *Certiorari.*

Also this form of a Certificate may serve where a *Certiorari* is brought to a Justice of Peace to remove a Recognizance of the Peace or good Behaviour taken by him *ex officio*, without any Writ of *Supplicavit*. See more *antea, sub hoc tit. Surety, &c.*

And if the Justice of Peace shall not return the *Supplicavit*, nor Certificate of his doings therein, until a *Certiorari* come to him for it, yet it seemeth no danger to him.

Also if the *Supplicavit* be against divers, and the demandant will release his prayer of the P. against one of them, then that release ought to be certified for him, and the Writ must be served and executed for the rest : or

C c

else,

§. 11.  
The return  
of the  
Supp.

The return  
of a Certi-  
orari.

And of the  
Recog.

§. 12.  
*Certiorari*

The Sched-  
ule or Cer-  
tificate.

§. 13.  
Release.

Lib. Intr.  
453.

F.N.B.11.  
b.

Lmb.111



else, *Non est inventus*, may be certified for him, and the Writ executed for the rest.

§. 14.  
Peace and  
good Be-  
haviour.

By the Book 30. *Affisarum plac.* 14. it appeareth, that a man may be compelled to find Sureties both for the good Behaviour, and for the Peace; for there one that had beaten a Woman in *West. Hall*, was bound to the Peace towards the Woman, and was also bound to the good Behaviour towards the King,

And so where one shall strike another in the presence of the Justice of Peace, the Justice may bind him to the Peace, and also to the good Behaviour, *Crompt. 140.*

So where one coming to the Sessions to prefer a Bill of Indictment, or about a Traverse to be tryed there, &c. if he shall be assaulted or threatened, &c. the Justices may bind the Offender to the Peace, towards the party; and to the good Behaviour for such contempt to the King and the Court, *Crompt. 141.*

And yet it seemeth that the good Behaviour includeth the Peace, and that he that is bound to the good Behaviour, is therein also bound to the Peace. See the usual forms of both Recognizances, & *hic postea.*

But if the Recognizance taken for the good Behaviour, be only *quod bene se gerat*, &c. *Quere* how far these words will extend. See 2 H. 7. 2. b. where the Justices held, That the good Behaviour might be forfeited by the number of his people, and by the harness (or weapons) and the like, although they break not the Peace. And they thought, that he which is bound to the good Behaviour, ought to carry and demean himself well in his apourt, gesture, and carriage, and in his company, not doing any thing which shall be cause of breach of the Peace, or to put the People in fear, dread, or trouble; and so shall be intended of all things which concern the Peace; But not in misdoing of other things, which touch not the Peace. See *hic postea.*

#### Surety for the good Behaviour. CHAP. CXXIII. V. 74.

§. 1.  
Name.

His Surety for the good Behaviour, or good abearing, is granted by the Justices of Peace, as well by the Authority of the Commission of the Peace the first of *Affign.* as also by force of the Statute 34 Ed. 3. cap. 1.

And this Surety for the good Behaviour is of great affinity with that of the Peace, and is provided and ordained chiefly for the preservation of the Peace (as that other is) as you may observe out of the usual forms of the Recognizances; yea by some Opinions it differeth in little or nothing from that of the Peace; but that there is more difficulty in the performance thereof; and the party so bound, may sooner fall into the danger of it, and of his Recognizance. For the Peace (say they) is not broken without an affray committed, battery, assault, imprisoning, or extremity of menacing; whereas the good abearing may be broken, and the parties Recognizance forfeited without any of these: as namely,

§. 2.  
Recogni-  
zance how  
broken.

1. By the extraordinary number of People attending upon the party bound. 2 H. 7. 2.

2. Or by his wearing of harness, or other weapons more than usually he hath done, or more then be meet for his degree.

3. Or by using words or threatnings, tending or inciting to the breach of the Peace. P. R. 12.

4. Or

4. Or by doing any other thing which shall tend to the breach of the Peace, or to put the people in dread or fear, although there be no actual breach of the Peace.

Yet note, These four last matters, as they are the breaches of the good abearing, so are they also causes to bind a man to the Peace; yea, they are breaches of the Peace, and a forfeiture of the Recognizance for the Peace. *Vide tit. Surety for the Peace.*

The Book 2 H. 7. fol. 2. before recited, concludeth, That the Justices were not all certainly advised how those words, *de se bene gerendo*, should be taken: Mr. Br. abridging thereof, *tit. Surety* 12. saith, that it was holden, That he who is bound to the Peace, ought to demean himself well in his Port, (*sc.* Behaviour) and company, not doing any thing that may be the cause of the breach of the Peace, or to put the people in fear or trouble; yet the Book seems to mean this of the good Behaviour. See *Fitz. Surety* 21.

But though this extraordinary number of attendants, and wearing of harness, &c. are breaches as well of the Peace, as of the good Behaviour; yet it may seem, that this for the good Behaviour, doth include the Peace, and besides importeth some greater or other matters of misbehaviour, and for which the Surety of the Peace is not to be granted, (although they also are against the Peace and Quiet or good Government of the Land) and you shall find that this Surety of the good Behaviour is grantable in divers other cases, in which the Surety of the Peace is not grantable.

This Surety of the good Behaviour is to be granted at the suit of divers, and those being men of credit, and to provide for the safety of many; whereas the Surety of the Peace is usually granted at the request of one, and for the preservation of the Peace chiefly towards one.

Also this Surety of good Abearing, is most commonly granted either in open Sessions of the Peace; or out of the Sessions, by two or three Justices of Peace; whereas that of the Peace is usually granted by one Justice of Peace, and out of Sessions.

14 H. 7. 8. And yet by the words of the Commission, as also by the common opinion of the learned, any one Justice of Peace alone, and out of the Sessions may grant this Surety of the good Abearing (and that either by their own discretion, or upon the complaint of others) as they may that of the Peace.

But this is not usual, unless it be to prevent some great and sudden danger; (especially against a man that is of any good Estate, Carriage, or Report.)

Also this Surety may be granted at the Suit of some one person.

But the more difficult and dangerous this Surety is to the party bound, the more regard there ought to be taken in the granting of it: and therefore, it shall be good discretion in the Justices of Peace, that they do not command, or grant it, but either upon sufficient cause seen to themselves; or upon the Suit and Complaint of divers others (as aforesaid) and the same very honest and credible persons.

Also this Surety of good Abearing, is often taken by the Justice of Peace, by virtue of a special Writ in the nature of a *Supplicavit*, directed out of the Chancery or Kings Bench; and then the Justice of Peace upon such a Writ is to proceed as a Minister, (as in case for the Peace, *mutatis mutandis.*) See before, *tit. Surety for the Peace, and Supplicavit.*

I once received out of the Chancery such a Writ directed to the Justices of the Peace in the County of *Cambridg*, and to the Sheriff of the said County: and to every of them (and grounded upon the Stat. 34. *Edw. 3.*) commanding us, and every of us, to take four Sureties (besides the party) whereof every one should have lands of such a yearly value, or goods of

§. 3.  
Peace and  
good Behaviour,  
is  
th y diffir.

§. 4.  
By Supplicavit.

such a value; and to bind the Sureties every one in such a sum, and the party in such a sum; That he shall be of good Behaviour henceforward towards us and all our people, and shall attempt nothing contrary to the said Statutes, &c. and therein I proceeded as a Minister only.

The party against whom such a *supplicavit* for the good Behaviour shall be granted out, before he be attached thereupon, may go or send up, and give Surety above in the Chancery, &c. (as here before, for the Peace) and thereupon he shall have a *superseas* out of that Court directed to the Justice of Peace, and Sheriff, and to every of them, commanding them to surcease to arrest the said party, or to do any other execution of the said Writ of *supplicavit*; and that if (before the coming of the said *superseas*) they have taken any such security for the good Behaviour of the party, that then they presently release the party of such Surety found by him, the former Writ of *supplicavit* notwithstanding.

For what cause this Surety for the good Behaviour shall be granted.  
CHAP. CXXIV. V. 75.

§. I.  
Where to be  
granted.

1. **I**T is chiefly to be granted (by the Justices of Peace out of their Sessions) in these cases following; viz. First, against common Barreters, common Quarrellers, and common breakers or perturbors of the Peace. See what Barreters be, *tit. Barreters, before.*

2. Also it is grantable against Rioters. See hereof before, *tit. Riots.*

3. Also against such as shall lie in wait to Rob, or shall be suspected to lie in wait to Rob, or shall assault, or attempt to Rob another, or shall put Passengers by the way in fear or peril.

4. Also against such as be generally feared (or suspected to be Robbers) by the High-way.

5. Also against such as are like to commit Murder, homicide, or other *Crom. 149* grievances to any of the Kings Subjects in their bodies.

6. Also against such as shall practice to poyson another.

I lately granted the good Behaviour against one, for that he had bought Ratsbane, and mingled the same with Corn, and then wilfully and maliciously did cast the same among his Neighbours Fowls, whereby most of his Fowls died; and it was holden to be a good cause to bind the Offender over, by the whole Bench: And since I have known it allowed as a good cause by the Judges of Assize.

7. The Justice of Peace also upon his own discretion (and without complaint) may bind to the good Behaviour any other person which in his presence or hearing shall misbehave himself in some outrageous manner of force, or fraud, and may commit such person to the Gaol if he refuse to be bound. *Sir Francis Bacon, 11.*

It is also grantable against such as be of evil Name and Fame, generally, *P. Just. 18* but more especially against such as are defamed or detected in any of these particulars following: *34 E. 3. c. 1*

1. First, against those that are greatly defamed for resorting to houses *13 H. 7. 10* suspected to maintain Adultery, or Incontinency.

2. Also against the maintainers of houses commonly suspected to be houses of common Bawdery.

One that had such lewd Women found in his house, was bound to his *Crom. 149* good Behaviour, (by *Wray, Anderson, and Manwood,*) 28 El.

3. Also



1 H. 7. 7.  
27 H. 8. 14. 3. Also against common Whore-mongers, and common Whores; for (by good opinion) Avoutry or Bawdery is an offence temporal, as well as spiritual; and is against the Peace of the Land.

13. H. 7. 10.  
Br. Trav.  
432. Upon Information given to a Constable, that a Man and a Woman be in Adultery or Fornication together (or that a Man and a Woman of evil Report, are gone to a suspected house together in the night) the Officer may take Company with him; and if he find them so, he may carry them to Prison; or he may carry them before a Justice of Peace to find Sureties for the good Behaviour.

4. Also against Night-walkers, that be suspected to be Pilferers, or otherwise like to disturb the Peace, or that be persons of evil Behaviour, or of evil Fame or Report generally, or that shall keep company with any such, or with any other suspicious persons in the night, 13 H. 7. 10. & 13 E.

1. Winch. cap. 4.

Against such as by night shall Eve/drop mens houses.

Against Night-walkers that shall cast mens Gates or Carts, &c. into Ponds, &c. or shall commit other like misdemeanors or outrages in the night time.

5. Against suspected persons who live idly, and yet fare well, or are well apparelled, having nothing whereon to live; (except upon examination, they shall give a good account of such their living.)

6. Against common haunters of Ale-houses, or Taverns, and common Gamesters; but more especially if they have not whereon to live.

7. Against common Drunkards; and yet by the Stat. 4 Jac. 5. such Offenders must be thereof lawfully convicted: *sc.* by presentment of the Offences at the Assizes, Quarter-Sessions of the Peace, or in the Court Leet; and thereupon a due proceeding to conviction, by the verdict of another Jury; or by the confession of the Offender in Court.

But now by the Stat. 21 Jac. c. 7. any one Justice of Peace (or any head Officer in any City, &c.) hath power to convict any person of Drunkenness, &c. See *hic antea, tit. Ale-houses.*

And for the second offence of Drunkenness, any one Justice of Peace may, (upon his view, confession of the party, or proof of one witness upon oath) as it seemeth, bind such Offender to the good Behaviour, 21 Jac. cap. 7.

8. Against all such as use to go on message of Thieves, see Stat. 18 E. 2. P. l. 1.

For all these former Offenders and the like, are evil members in the Commonwealth, and such their demeanor and living is greatly to be suspected, (and besides, do seem to be more properly said against the Peace of the Land, then *Avoutry* in the case before, 1 H. 7. 7.) and therefore it seemeth reasonable, just, and expedient, that the Justices of Peace (upon their discretion) should convent such persons before them, and examine them and their courses of life; and if they cannot yield a good reason and account of such their courses, then to bind them to their good Behaviour.

Also the good Behaviour seemeth grantable, against such as shall make false out-cries; or shall raise Hue and Cries without cause; for these are disturbances of the Peace, *Crompt. 179.*

If one man do levy *Hue-and-Cry* upon another without cause, either of them may be attached (and bound over) as disturbers of the Peace, *P.R. 156. 29 E. 3. Fitz. Trespass 252. tamen quere,* concerning him upon whom the Hue-and-Cry is levied: Except that he be either a man of evil Fame, or that there be some Felony committed, &c.

Also it seemeth grantable against Cheaters and Couseners.

§. 2. Libellers (It seemeth) also may be bound to their good behaviour, as P. R. L. & Libels. disturbers of the Peace, whether they be the contrivers, the procurers, or the publishers of the Libel: for such libelling and defamation tendeth to the raising of quarrels, and effusion of blood, and are special means and occasions tending, and inciting greatly to the breach of the peace.

*Libellus*, literally signifieth a little book.

By use it hath also two other significations: First, it signifieth the original Declaration of any action in the Civil Law.

Secondly, it signifieth a criminous report of any person, cast abroad, or otherwise unlawfully published, and is called an infamous Libel.

Another describeth it thus, *Famosus libellus est qui impingit delictum aliquod notabile*.

And yet this libelling may be done after divers sorts or manners.

1. By scandalous writings, be it in book, ballad, epigram or rhyme, either in meeter or prose as aforesaid.

2. By scandalous words, scoffs, jests, taunts or songs, maliciously repeated or sung in the presence of others.

3. By pictures or signs, as by hanging of pictures of reproach, or signs or tokens of shame, or disgrace near the place where the party thereby traduced, doth most converse: as the picture of the Gallows, Pillory, Cucking-stool, Horns, or such like. *Co. 5. fol. 125.*

And in such cases it is not material whether the libel be true or false, or the party thereby scandalized, be living or dead, or be of good name or evil.

And these libellers, as also their procurers, and the publishers thereof, may be punished in divers other manners:

1. Either they may be indicted for the same.

2. Or the party grieved may have his action upon the case, and recover his damages, *Lib. Intr. fol. 13. Mes cest semble quand les parols sont actionables.*

If therefore any man shall find a libel, and would keep himself out of danger; if it be made against a private man, the finder may either burn the same, or else he must presently deliver the same to some Magistrate.

But if it concerns, or be made against a Magistrate, or other publick person, the finder ought presently to deliver the same to some Magistrate, to the intent that by the examination and industry of such Magistrate, the author may be found out.

§. 3. Also this surety of the good behaviour, is used to be granted against the putative father of a bastard-child. See *tit. Bastardy.*

It seemeth also grantable against unlawful hunters in Parks, after their examination taken, See before *tit. Hunting.*

Also it shall be granted against him that shall abuse a Justice of Peace, Constable, or other Officer of the peace in executing their office.

*A.* assaulted a Constable in doing his office, it is a good cause to bind *A.* to the good behaviour. *Fitz. Barr. 202. Crompt. 135.*

The Sheriffs Bayliff, upon a Warrant from the Sheriff (to make execution of the goods of *A.*) went into the house of *A.* finding the doors open, and *A.* shut the doors upon the Bayliff, and so detained him as a Prisoner in his house, and Sir Robert Houghton, one of the Judges of the Kings Bench, thought it a good cause to grant out process of the good behaviour against *A.* for thus abusing an Officer of the Law, *Anno 17 Jacobi Regis.*

A Justice of Peace seeth a man break the peace, (sc. make an assault, or affray upon *A.*) and he chargeth him to keep the peace, and the other answereth that he will not, the Justice of Peace may bind him to the good behaviour. For

For if (as one saith) contempt, or contumely, used to the person of a mans better, neither Policy for Example, nor Religion for Peace, may tolerate, much less may any use contempt towards, or abuse such as are in authority, especially when they are in executing their Office.

See Exod.  
22. 23.

Nay, it seemeth that he which shall use words of contempt, or *contra bonos mores*, against a Justice of Peace, though it be not at such time as he is executing his Office, yet he shall be bound to his good behaviour. See Ex. 22. 28.

"But it was adjudged between *Dean and Garret*. T. 41 El. That good "behaviour is not requirable for unseemly words spoken of a Magistrate "or Justice of Peace, when he is not in the execution of his Office; and "it was resolved in Sir *William Brunckers* case B. R. P. 23 Car. That a Justice "of Peace cannot commit one, until he find sureties for the good behavi- "our, unless the party be thereof convicted, or at least indicted, and it "seems reasonable so to do, unless for any offence committed against a "Justice of Peace personally: And so also it was adjudged M. 29 El. That "to call a Mayor Fool, unless it be when he is in the execution of his "Office, is not cause to imprison or bind to the good behaviour. *Mer.* "Rep. p. 247.

Ch. 11. 98.

If a Citizen, or Freeman of a Town Corporate, shall use words of contempt, or *contra bonos mores*, against the chief Officer of the City or Town, or his Brethren, they are good causes to commit him to Prison, until he shall find Sureties for his good behaviour: for obedience and reverence ought to be yielded to the Magistrate, for that they derive their authority from the King; and *obedientia est legis essentia*.

Also he that shall abuse a Justice of Peace his Warrant, may be bound to the good behaviour. See after, *tit. Warrants*.

A man complaineth of a Riot, or Forcible Entry, so that the Justices of Peace are assembled to inquire thereof, and then the Party that complained will not prosecute the matter, it seemeth that the said Justices of Peace may bind him to his good behaviour for thus deluding them.

And so of such as shall charge another with Felony before a Justice of Peace, and yet will not give evidence, &c. See before, *tit. Felony*.

Crompt.  
134.

A. is bound to keep the Peace against B. only, and getteth a *superseas*, and after B. releaseth him; after A. is arrested for surety for the peace at another mans Suit, and sheweth his first *superseas*, it seemeth he shall be bound to his good behaviour for this deceit:

Yea, whatsoever act or thing is of it self a misbehaviour, or is against the good behaviour, is cause sufficient to bind such an Offender to the good behaviour: for the Magistrate ought to maintain all civil honesty.

Also by the expresse words of the Statutes, the Offenders hereunder named shall be bound to their good behaviour:

S. 4.  
By Statute

5 Eliz. 21.

3 Jac. 13.  
7 Jac. 13.

1. Disturbers of Preachers, 1 M. 3. P. 1.
2. Destroyers of Fish-ponds, &c. or stealers of Fish, (after lawful conviction, &c.) 5 Eliz. 21. P. Fish. 7.
3. Takers of Hawks or Hawks eggs, out of other mens ground, after lawful conviction, &c. P. Hawks 1.
4. Unlawful stealers, hunters, or killers of any Deer or Conies in the night or day time, in any Park or Warren, after lawful conviction, &c. See the Stat. 5 Eliz. cap. 21.

But all these former Offenders must be bound at the Sessions.

5. Popish Recusants, absenting themselves from Church twelve months, shall be bound in the Kings Bench, 23 El. 1. P. Recusants 1.

6. He



6. He that is attainted of Felony, and hath a pardon for the same, shall within three moneths find Sureties for his good behaviour; but he shall be bound before the Sheriff and Coroners, who shall return the same into the Chancery. 10 E. 3. 3  
P. paron.

Also he that is acquitted of Felony, if he be of evil Fame, or of evil Behaviour, it seemeth the Justices of Peace upon their discretion, may bind him to his good Behaviour, *Cromp.* 135.

7. Such persons as shall disturb the execution of the Stat. 39 Eliz. 4.  
39 Eliz. 4. concerning the punishing, or conveying of Rogues; any two Justices of Peace may bind them to their good Behaviour. See before, *tit. Rogues.*

8. So of such as shall disturb the execution of the Statute for the relief, setting on work, or setting the Poor. See before, *tit. Poor.*

9. The Mother of a Bastard-Child (which may be chargeable to the Parish) for her second offence shall be committed to the house of Correction, there to remain, until she can put in security for her good Behaviour, &c. See before, *tit. Bastardy.* 7 Jac. 4.

10. Such as have their Houses infected, or be themselves infected with the Plague, and being commanded to keep their Houses, shall disobey, &c. 1 Jac. 30 they shall be bound to their good Behaviour for one whole year. See before, *tit. Plague.*

**§. 5.** What Act shall be a Forfeiture of the Recognizance taken for the good Behaviour. See here before.

Also it seemeth, that the Party bound to his good Behaviour for offending against any the Statutes here before mentioned, if he shall afterwards offend against any the said Statutes, he shall thereby forfeit such his Recognizance. Lamb. 111

To be drunken, is a breach of the good Behaviour, as Sir Nicholas Hyde did deliver it in his Charge at Cambridge, Lent Assize, Anno tertio Caroli Regis.

"One bound to the good Behaviour at the prosecution of Stamp, and he said to him Thou art a quarrelsome fellow, and a scurvey knave, and adjudged these words were no breach of the Recognizance; but to speak such words to an Officer in the execution of his Office, is a breach of the good Behaviour, for it may be an impediment and a disgrace to him in the execution of his Office. And to say of a Merchant that he is a Bankrupt, is no breach of such a Recognizance. So one said of a Mayor playing at Tables he is a fool, this is no cause to imprison a man; but if he were in the execution of his Office it is otherwise, *Stamps case H. 20 Jac.*  
"B. R. Roll. Rep. part 2. p. 272. & fo. 200.

"A Trespass done, and indictment and conviction for the same, *quod vi & armis clausum fregit & averiam cepit & abduxit & adhuc detinet*, is not a breach of the good Behaviour; So likewise, for saying of another he is a Pelter, a Lyer, a Drunkard, and I will make him a poor Kirton by three Justices, for they are not words which menace Battery, and he ought to do such act as imports an intention to do violence to his body; as to say, I will meet with thee. Moore  
rep. p. 249

The form of a Warrant for the good Behaviour. *Vide postea, titulo, Warrants.*

The form of the Recognizance for the good Behaviour. See after, *titulo, Recognizances.*

**§. 6.**  
*Release.*

Whether the Surety of the good Behaviour (taken upon complaint) may be released by any special person, some do doubt, because it seemeth more popular than the Surety of Peace; yet other do hold, That it may be released, either by the Justice of Peace himself that took it, in discretion,

on, or by the Party upon whose complaint it was granted, even as that for the Peace may.

P. R. 12. It seemeth also a *Supersedeas* of the good Behaviour may be granted by §. 7.  
the Justices of Peace (as well as for the Peace, *mutatis mutandis*) upon *Supersedeas*  
good Sureties taken by the said Justices, of the Party, to be of the good  
Cromp. 237.  
Cromp. 145.  
Behaviour.

If a man be bound to the good Behaviour (before the Justice of Peace) §. 8.  
and to appear at the next Assizes or Sessions, yet the Party bound, may by *Certiorari*.  
a *Certiorari* remove the Recognizance into the Chancery, or Kings Bench  
before the day, and then he shall not need to appear at the Assizes or Sessi-  
ons; for they shall have no Record, whereupon he may be called there.

*Forcible Entry, and Forcible Detainer.* CHAP. CXXV. V. 76.

Lamb. 138  
Cron. 76. **T**HE Common Law being the Preserver of the common Peace of the §. 1.  
Land, hath always abhorred force, as the capital Enemy thereto, *Co. Common*  
3. 12. and yet, before the Reign of King Richard the Second, the Common *Law*.  
Law seemed to permit any man to have entred into Lands and Tenements  
with force and arms, and also to have kept and detained them with force,  
where his Entry was lawful.

And at this day, if a man doth enter into any Lands or Tenements with  
force, or multitude of People where his Entry is lawful, he is not punisha-  
ble by action, either at the Common Law, nor by action upon any Statute;  
for where the title of the Plaintiff is not good, there he hath no cause of  
action, although the Defendant doth enter with force: but in such case he  
that entred with force, must be indicted upon the Statute: or otherwise  
complaint may be made thereof to the Justices of Peace: and as well up-  
on such indictment, as upon such complaint, the Offender shall be punish-  
ed; yet the Party (*ousted*) shall not be restored without indictment, and  
15 H. 7. 17.  
Br. For. 11 the force thereby found. *Vide antea, tit. Forcible Entry.*

And for the better restraining of such force and forcible Entries into §. 2.  
Lands and Tenements, and to inflict condign punishment upon the Offen- *Statutes*.  
5 R. 2 c. 7.  
Regi. 182 ders therein, it was first provided by the Statute, 5 Rich. 2. That no man  
should enter into any Lands or Tenements with force or multitude, though  
he had good Right or Title to enter, but should enter only in peaceable and  
lawful manner. See *Pl. 86. b.*

But this Statute provided no speedy remedy, nor extended to holding  
15 R. 2 c. 2. with force, nor gave any special Power therein to the Justices of Peace, but  
upon a general enquiry, in a general Sessions of the Peace, (and not other-  
wise) and therefore by another Statute made 15 Rich. 2. It was further  
provided, That if any man should detain (or hold) with force, after such  
Forcible Entry made, upon complaint thereof made to any Justice of  
Peace, the same Justice shall presently take and come with the Power of  
the County, and shall go and view the same, &c. and if the same Justice  
do find any holding the same forcibly, that then they should be imprisoned  
in the Gaol by the same Justice, as convict, by the Record of the same  
Justice; 'there to remain, until they have made Fine and Ransome to the  
King.'

Yet neither of the former Stat. extended to those that entred peaceably,  
8 H. 6 c. 9. and then held with force, nor yet doth give any remedy, if the Parties who  
made the Entry with force, be removed before the coming of the Just. of P.  
nor yet ordained any pain against the Sheriff, if he did not obey the pre-  
cepts of the said Justices, for to execute the said Statute, when the said Ju-  
stices

Justices would inquire of the same. And therefore the Stat. of 8 H. 6. doth give remedy, first where any man shall enter with force, or shall enter peaceably, and after detain, hold, or keep possession by force.

Also these two last Stat. of 15 R. 2. and 8 H. 6. do enable any one Justice of P. to give present remedy, viz. to remove the force, and commit the Offenders, in cases of Forcible Entry, or holding against the aforesaid Stat.

And the said Stat. of 8 H. 6. extendeth further, reaching the Offenders, if they were removed or gone before the coming of the Justices; giving an inquiry, and restitution, and also punishing the Sheriff that shall not obey the precepts of the Justice in this behalf.

So that these Statutes do now give full remedy, and do prohibite, and are made against these three degrees or sorts of force, viz. against,

1. Such as enter peaceably, and then hold forceably.
2. Such as enter with force, and then hold peaceably.
3. Such as do both enter forceably, and hold forceably.

I have (here before) already shewed in some measure how the Justice of Peace shall demean himself in the execution of these Statutes; now I will proceed to give him some further light in this business, in these particulars following.

1. First, what is a forceable Entry, and what is a forceable holding within the meaning of these Statutes.
2. Who may commit a forceable Entry, &c. and upon whom.
3. Where a force, or forceable holding, is justifiable, or lawful.
4. What, and how many several remedies the Party hath, that is so put out, or kept out of his Possessions.
5. The manner of proceeding of the Justice of Peace by inquiry.
6. Of restitution to be made to the Party so put out, by whom and to whom.
7. What causes there may be for staying the Justice of Peace from making Restitution.

*What is a Forceable Entry, or holding within these Statutes.*

CHAP. CXXVI. V. 77.

§. 1. **F**orce, in the Common Law, is most usually applied to the evil part, and signifieth unlawful violence used either to things or persons, *Co. L. 161. b.*

Our Law taketh knowledge of two manners of force; the one may be termed a force in Judgment of Law, which accounteth every private Trespass to be a force; so as if I do but pass over another mans ground without Licence, he may have his action of Trespass against me, why or wherefore with force and arms, &c. See *Co. L. 257.*

The other manner of force is more apparent, and always carrieth some fearful shew and matter of terror with it.

This last sort of force is, that which is prohibited by these Statutes: and therefore note, That every force punishable by these Statutes, must have one of these two Badges, *sc.* it must be either *Manu forti*, with force or strong hand, or *Multitudine*, with multitude of People, *Lamb. 145. and 5 R. 2. c. 7.*

*Manu forti*, viz. either with apparent violence (in deed, or in word) offered to the person of another, as threatening Speeches, turbulent Behaviour, or actual violence, or else that they be furnished with offensive weapons (by them not usually born) whether they offer violence or fear of hurt



hurt to any other there or no, and this may be done by one person only. See after, *sub hoc tit.*

*Multitudine, sc.* with company more then usually they have attending on them, 10 H. 7. 12. Now by some opinions, the Law calleth a multitude, when there be ten or more in one company; *Multitudinem decem faciunt.*

And yet Sir *Edward Coke* upon *Littleton* 257. saith, That he never read it restrained by the common Law to any certain number, but left to the discretion of the Judges, or Justices.

‘Now any one may commit a Force: and there may commit a Riot, &c.’ *Force entry.*

If therefore one or more persons shall come weaponed (especially with weapons not usually born) to a House or Land, and shall violently enter thereinto, this is a forceable Entry, within the meaning of these Statutes.

Lamb. 146

Much more, if (being so entred) he or they shall there offer violence, or fear of harm to the person of any that is in possession thereof; most of all, if he or they shall forcibly and furiously expell and drive another out of such his possession.

So it is, if one shall enter peaceably (the door being open, or only latched,) and after he is in the House, he shall forcibly put another out of his Possession.

So it is, if he or they which shall enter peaceably, shall after their entry offer apparent violence, threatnings, or fear of harm to the person of any that is in possession, to the intent to get him out, and to make him leave the possession, though they do not put him out of possession, much more if they get possession thereby.

If he or they that have entred peaceably, shall after use words to any in possession to this effect, as to say, They will hold it or keep it, though they dye for it, or in spight of the other, or such like, or other threatening words; this maketh it a forcible Entry.

Lamb. 146  
Crompt. 99

So it is, if divers persons shall come with weapons (not usually born by them) to a House that is open, or to ground, and shall there enter peaceably without any disturbance; yet this is a forcible Entry, for it shall be intended, that they would have used force, if they had been resisted.

So it is, when the Master entred into an House, or Land, being attended with a greater number of Servants then usually do wait on him.

Co. L. 257.  
10 H. 7. 12.  
1 R. For. 30

Note, that though a man do actually use no force in his Entry, yet if he do come so appointed, either with weapon or company, that other men may be reasonably affraid that he meaneth to make his way by force, rather than he will fail of his purpose, it seemeth to be a forceable Entry.

Lamb. 146

‘And if three or more, shall enter peaceably, (upon another being in possession) and shall continue there peaceably, though this be no forceable Entry or Detainer, yet it may prove a Riot in regard of the number.

Now there are two sorts of forces, as is aforesaid, *sc.*

*Force two fold.*

1. An actual force; as with weapons or number of persons, &c. not usual.

2. A force implied in Law; as every Disseisin, Rescous, and Trespass implieth a force, and is with force and arms, *Co. L. 157.*

Also it seemeth, that every Entry into another mans house, or ground which is made with force (*sc. manu forti, or cum multitud.* either with apparent violence offered to the person of any other, or furnished with weapons, or company, which may offer fear) though it be but to cut or take away another mans Corn, Grass, or other Goods, or to fell or crop Wood, or do any other like Trespass; and though he do not put the Party out of his possession, yet it seemeth to be a forceable Entry, and an actual force punishable by these Statutes. See *Lamb. 145.* But

*Trespass.*

But if the Entry were peaceable, and after such Entry made, they cut or take away any other mans Corn, Grass, Woods, or other Goods without apparent violence or force, though such acts are accounted a Disseisin with force, yet they seem not to be punishable by these Statutes, *sc.* the Justices of Peace are not to remove, imprison, or fine such Offenders. Lam. 147.

Also, if one or more shall enter into another mans House or Land peaceably, and after his or their Entry, shall by force, or violence, cut or take away any Corn, Grass, or Wood, &c. or shall forceably or wrongfully carry away any other Goods there being; this seemeth to be a forceable Entry, punishable by these Statutes. Crom. 70.  
11 H. 4. tit. 12.

So is it, if a man shall distrain with force for a Rent (be it due or not due) this doth countervail any Entry with force, *Lamb. 147. Br. forc. 1.* 20 H. 6. tit. 12.

§. 3.  
By words.

And in these cases of Trespass only, the Justice of Peace (upon complaint to him made) may, as it seemeth, remove such force; and upon view thereof, may imprison and fine such Offenders.

If a disseisor hath entred peaceably, and being entred, shall presently threaten to kill the Disseisee (if he re-enter) this seemeth a forceable Entry in the Disseisor. See more *postea sub hoc tit.*

But note, that a forceable Entry cannot be without an actual Entry, for the words of the Statutes be, *whosoever doth enter, &c.* 2 H. 7. tit. 12.  
Br. forc.

Note also, if one that hath right to enter upon Land, shall go with divers in his Company, and with weapons, over the Land whereto he hath right, to the Church, Market, or some other place; this is no Entry with force, except he shall express his intent, that he doth enter there claiming the Land. Crom. 70.

Note also, that if a man shall enter with force (into House or Land) although he obtained not, nor getteth the actual possession thereby, yet shall he be imprisoned and fined for the only entering with force (as it seemeth,) See the Statute: but Restitution is not to be made, but only where there is a forceable putting out, or a holding out, of another out of his possession, and found by a Jury.

Lawful.

If by fair means, a man (whose Entry is lawful) shall perswade or intice them which are within the House, to come out, and then the door being open or shut by the latch only, he shall enter peaceably, without multitude, offensive weapons, or other violence; this Entry seemeth to be justifiable.

So it is, if he shall enter peaceably, and then by gentle perswasions can send them out that are within the house, and after shut the door, and keepeth them out; this seemeth justifiable, so that afterwards he holdeth it not forceably, nor useth violence or threatening Speeches.

So it is, if I shall take a man being out of his house, and then I do put or send into the house my Servant (or some other) in peaceable manner, and do hold away the other by imprisonment of his person; this is no forcible Entry nor Detainer within these Statutes, but a false Imprisonment, punishable by action only. Lamb. 147.

So it is, if he whose Entry is lawful, shall enter peaceably into his house (the doors being open, or shut by the latch only) and being so entred, shall continue and abide there peaceably; this is justifiable. And if they which were before in possession, shall put or thrust him out forceably, this is a forceable detainer of their parts. See more hereof *sub hoc tit. postea.*

§. 4.  
Forcible  
Detainer.

'Forceable detainer is a violent act of resistance by strong hand of men 'weaponed with arms, or other account of fear in the same place, or elsewhere, by which the lawful Entry of the Justices, or any other is barred 'or hindred.

And

Lamb. 149 And Forceable Detainer, must be understood of a Forceable Detain- Forceable  
Detainer.  
ing or With-holding of the Possession of Lands or Tenements, and not of  
the Person of a Man, as before.

§ H. 6. c. 9. Note also, though the Entry were at the first peaceable, and lawful, yet  
P. Force 4. if there be after a Holding by Force, it is punishable by the Statute, except  
where there was at the first a lawful and peaceable Entry, and thereupon  
a lawful Possession; peaceably continued by the space of three years toge-  
Lamb. 164 ther, without interruption: For there a Man may hold and keep such pos-  
session with Force against all others (saving against the Kings Officers.)

Lamb. 148 If the Justice of Peace shall come to the house or place that is supposed  
P. R. 4. 1. to be holden with Force, and there shall find the Doors or Gates shut, and  
Crom. 70. he or they within shall deny him to enter, (or will not suffer him to enter)  
this is a Forceable Holding and Detainer, though there be no Weapons  
shewed or used, and though there be but one person in the house, or upon  
the ground.

ibid. So it is, if when the Justice of Peace entereth the house or ground, he  
shall find there any persons in Harness, or otherwise armed, or having Har-  
ness, Armor, or other Weapons (not usually born by them) lying ready by  
them. This is Forceable Detainer.

ibid. So it is, if the Justice of Peace shall find in the house, any great number  
of people, other then the ordinary family or company.

P. R. 4. 1. Also, if a Man shall enter peaceably into a house, and after shall bring  
into the same more Weapons then he and his ordinary family do usually  
wear, or shall make any use of, such Weapons as he doth find in the house,  
to defend his Possession therewith. These are Forceable Detainers within  
these Statutes.

ibid. If a Man that hath peaceably entred into an house, will bestow Men  
with Force, (i. e. with Harness, Guns, or other Weapons) in some other house  
or place not far distant, to the intent that they may be ready to assault such  
as shall enter upon him. This is a Detainer with Force.

Lamb. 149 So it is, if the Disseisor of an House or Land, shall forestal the way of  
Cromp. 69. the Disseisee, with Force and Arms, so that the Disseisee dareth not enter,  
or come near thereto for fear of death, &c.

So if a Man shall Distrain for a Rent Service, or a Rent Charge, and a  
Rescous shall be made unto him. This is a Disseisin with Force. Co. L. 161. b.

P. R. 39. So it is, if a Man shall keep his Cattle in another Mans Ground by  
force, claiming Common there, where he hath no Common. And in this  
case, the Justice of Peace upon Complaint to him made, may remove this  
Force; and upon view thereof, may record it, and commit such offenders  
to prison, and may fine them therefore, as it seemeth, but cannot award  
Restitution.

Also there may be a Forceable detaining of Possession by word only,  
without any Forceable Act.

Lamb. 149 As if A. hath wrongfully, though peaceably entred into the House, or §. 5.  
By words.  
Cromp. 70. upon the Land of B. and hath put out B. and shall presently threaten or say  
P. R. 39. to B. That if he do come thither again to enter, he will kill him. This seem-  
eth a Forceable Entry by A. And if B. shall afterwards come again to make  
his Entry, and then A. shall threaten to kill him. If he entreth there this is  
a Forceable Detainer in A.

And it seemeth, that to threaten to maim, beat, or to do other bodily  
hurt to B. in the case aforesaid, amounteth to a Forceable Entry, or Detain-  
er, for that death may insue upon such beating or hurt. See 39 H. 6. 50.  
7 E. 4. 21. But to threaten to burn the house, or to spoil his goods therein,  
(if B. shall come thither, to enter again.) This seemeth not to amount to



any such matter, for that B. may afterwards have his Action for the burning of his house, or spoiling of his goods, and shall thereby recover damages, to the value thereof, &c.

Also when B. shall come to make his Entry as aforesaid, if A. shall say to him, that he will not open the door. This is no Forceable Detainer. Crompt. 70

So it is, if A. be in possession of a house, or hath a Lease thereof at the will of B. and after B. entred into the house, and commandeth A. to go out, and to leave him the Possession. And A. will not go out, this is no Force, for refusing, or denying only to go out, is no force, unless there be withal some Forceable Act or threatening Speeches. *Ubi factum nullum, ibi fortia nulla.* Where there is no Fact, there is no Force. Co. 4. 43. Crompt. 73

Where no  
Fact, no  
Force.

A. mortgageth his house to B. upon condition, That if A. shall pay to B. such a day 40 l. then the said Mortgage and Feoffment to be void, and by agreement of them both, A. the Mortgagor continueth the Possession, until the day of Redemption, at which day A. payeth not the 40 l. and after B. cometh to re-enter, and A. keepeth the Possession by force. This is a Detainer by Force in A. This was Mr. Richard Godfreys opinion between *Willows* and *Targer*.

The Disfeisor maketh a Gift in Tail to B. who keepeth the Land with Force, at the time when the Disfeisor maketh his Claim, which Claim is made within the view so near as he dareth, for fear of death, battery, or other bodily hurt, if B. after such Claim shall continue the Possession with Force, he may be thereof indited, &c. For this amounteth to a new Entry, and a Detainer with Force by B. Crompt. 69

And note, that whosoever mine Entry is lawful, if the Possession be detained, or holden from me by Force, I may pray the aid of the Justices of Peace to remove such Force as it seemeth. Lamb. 147  
Crompt. 70  
P. R. 99

If a Man hath a Rent or Common of Pasture out of another Mans Land, and coming to Distrain for his Rent, or to use his Common, he is so forceably resisted by the Tenant of the Land, that he cannot, or dareth not, either Distrain for his Rent, or take the benefit of his Common. This is a Holding with Force in the Tenant, and punishable by these Statutes.

So it is, if the Tenant of the Land shall forestall the way with Force and Arms, or shall threaten him (that hath the Rent or Common) so that he dareth not to come to Distrain for his Rent, or to take his Common. Crompt. 199

So it is, if a Man shall Distrain for his Rent, and the Tenant of the Land shall make Rescous with Force and Arms. Ibid.

And in these Cases of a Rent, or Common, the Justice of Peace upon complaint to him made, may remove such Force, and upon view of such Force may record it, and may therefore imprison and fine such offenders, but cannot award Restitution, *sc.* Cannot restore the Party to his Rent or Common, which are to be taken, and used in another Mans Land, for Restitution is not to be made, but only of House or Land, as you may see hereafter. Br. Imp. 70

§. 6. One person alone may commit or make a Forceable Entry, or Detainer, if so be he do it with offensive Weapons, not usually born, or do use turbulent behavior, violence, or threats, &c. to the affray or terror of others; or do refuse to suffer the Justice of Peace to enter. Lamb. 174  
Col. 59

who may be  
guilty of  
it.

An Infant of the age of eighteen years, by his own act may commit a Forceable Entry or Detainer; and so he may, though he be under eighteen, if so be that he be of the age of discretion, (*sc.* of the age of fourteen years.) See *Perk. f. 10. b.* And it seemeth the Justice may fine him therefore. But yet it shall be good discretion in the Justice of Peace to forbear the imprisonment of such Infants. See *Br. Imp. 43, 45, 75, 101. & hic poss. tit. Imprisonment.*

For an Infant shall suffer no imprisonment or corporal pain for any offence by him committed against any Statute, wherein an Infant is not expressly named.

But yet he may forfeit the penalty of a Penal Statute, and so by a Penal Statute may forfeit and lose his Goods, if he be of years of discretion. See *Doct. & Stud.* 147, 148.

And an Infant of the age of eighteen years, may be a Disseisor with *Infant.* Force, and may be imprisoned for the same. 22 *Edw. 4. Old Nat. Br.* 128.

That Infants may be imprisoned by express words in some Statutes. See *hic, cap. 45.*

But if an Infant commandeth another to enter, or hold with force to his use, which is done accordingly; yet the Infant shall not be punished, for such offence, for his commandment therein was void.

Also a *Feme Covert*, (by her own act) may commit a Forceable Entry *Feme Covert.* or Detainer; and upon the Justices view of the Force, she shall be imprisoned therefore, (and she may be fined in such case :) But such Fine set upon the Wife, shall not be levied upon the Husband; for the Husband shall never be charged for the act or default of his Wife, but when he is made a Party to the Action, and Judgment given against him and his wife, *Co. 9. 72. and Co. 11. 61.* And if upon the tryal it be found to be her only act, she only shall be taken and imprisoned.

Divers do enter with force to the use of *A.* who is not then present with him, but doth after agree thereto: This agreement after maketh *A.* to be a Disseisor, but not to be punished for the Force. *Quere*, if *A.* had counselled, consented, or agreed thereto before the Entry. It seemeth, that a commandment, consent, or agreement before or after, though it may make one a Disseisor; yet it is not to be punished by the Justice of Peace upon these Statutes, for that a Forceable Entry cannot be adjudged against a Man, without an Actual Entry be also made by him, or he at least present.

But if *A.* that shall command or counsel others thereto, shall also be present at the time of the Entry, although he doth then nothing, yet he is now become a principal, and punishable by these Statutes. *Vide 17 Aff. pl. 14.* §. 7. *Consent.*

If divers do come in one company, to enter into Lands, &c. where their Entry is not lawful, and all of them saving one did enter, and demean themselves in peaceable manner, and one only doth enter with Force, or (after Entry made) doth use Force and Violence. This shall be adjudged a Forceable Entry in them all (although the Force were against their will;) for where divers do come in one company to any place, to the intent to do any unlawful thing, be it robbery, homicide, riot, affray, or any trespass, here the act of one of them shall be adjudged the act of all of that part that are present, and every of them shall be adjudged a principal doer, although they stand by and do nothing. So it seemeth, though some of them came without any intent of evil, if they came together in company with the other offenders, or if they came after; yet if they be either aiding, or countenancing to the offenders, they shall be also adjudged principal doers, as well as the other. And yet *Finex*, Chief Justice, 2 *H. 8.* made a difference where their intent at the first was to do an unlawful act, and where not. *Cro. 161. See Co. L. 157.*

An Indictment upon the Statute of 8 *H. 6.* for the King, is not good; *The Persons put out.* for the King cannot be disseised, nor put out of his Freehold; neither can the King bring any Action upon the Statute of 8 *H. 6.* nor any other Action which might prove him out of Possession of the Land. *P. R. 39. b.*

And if the Kings Termor be put out by force, he cannot prefer a Bill of Indictment (upon the Statute of 8 H. 6.) that he was put out, and the King Disseised : But he must have an Information of Intrusion in the Exchequer. Crompt. 46

The Kings  
Tenant.

Yet it seemeth, that upon complaint made to the Justice of Peace by the Kings Termor, of any such Force, the Justice of Peace, may, nay ought to amove the Force, and upon his view thereof to record it, and to commit the offenders to Prison, and may fine them; and after such Force removed, the Kings Termor may presently re-enter (if he can) in peaceable manner.

Lessee for  
years.  
Copiholder.

If a Forceable Entry or Detainer shall be made upon any Lessee for years, Tenant at Will, or upon a Copiholder, whether it be by a stranger, or by the Lessor, or by the Lord, the Justices of Peace upon their view thereof, are to remove such Force, and may commit to the Prison, the parties which made such Entry, or which shall hold it with Force, and may fine them: But whether the Justice of Peace might make Restitution, and set them (*sc.* The Lessee for years, Tenant at Will, or Copiholder) into their Possessions again, hath been much questioned.

§. 8.  
Restitution  
upon View.

Some hold opinion, That the Justice of Peace might put them in possession again; and of this opinion was Mr. Marrow, and Mr. Lambert; and to maintain this opinion, these Reasons may be given. Lamb. 149

First, for that the words of the old Statutes seemeth to warrant it; for the Statute of 15 R. 2. in the Preamble thereof, as also the Statute of 8 H. 6. in the Body thereof, hath this word [*Possessions*] which word most properly doth extend to a Lease for years, &c.

Again, that clause of the Statute 8 H. 6. which provideth the restitution, is thus. If it be found that any doth contrary to this Statute, then the said Justices, &c. shall put the party so put out in full possession, &c.

Now it cannot be denied, but that he which by force expulseth Lessee for years, Tenant at Will, or a Copiholder, doth contrary to this Statute; also they be the parties put out.

Again, the same mischief and inconvenience which these Laws do labor to remove, is to Lessee for years, Tenant at Will, and to the Copiholder.

And we may find it usual, that where Statutes are made for to remedy any common mischief, there to help things in the same degree one action, thing, place, and person, hath in construction been taken for another: And a good Expounder, saith Sir Edw. Co. 11. 34. maketh every sentence to have his operation to suppress all the mischiefs before the said Act, and principally those that are specified in the Act. Co. 11. 34.  
Flow. 71.

And again, saith he, It is the office of the Judges always to make such construction of Statutes as may repress the mischief, and advance the remedy, and to suppress all Evasions which may continue the mischief, and to add Force and Life to the cure, and remedy, according to the true intent of the Makers of the Statute. Co. 11. 73. b. & Co. 3. 7. Co. 3. 7.  
& 11. 73.

Restitution.

Others hold the contrary, *sc.* That Lessee for years, nor Copiholder, or Tenant at Will, could not have restitution by the hands of the Justice of Peace; and this seemed to be the common opinion. Their reason was,

For that the words in the Statute of 8 H. 6. (in that clause which specially provideth the Restitution) as thus. The said Justices, &c. shall re-seise the Lands or Tenements, and thereof shall put the party so put out, in full possession, &c. Which words, [*Lands or Tenements*] are only to be understood of them that have Inheritance, or a Freehold at the least.

But



But to this it may be answered, That the said Statute of 8 H. 6. (in the Body thereof) hath these words, *Where any do make any Forceable Entry into Lands, Tenements, or other Possessions, or them hold Forceably, &c.* Which words [*Possessions*] extendeth to a Lease for years, &c. And then the words [*Possessions*] being in the same Statute, we shall find that a Statute is to be expounded upon all the parts thereof together, and not upon one part alone by it self. To which purpose, see *Lincoln Colledge case*, and Doctor *Bonhams case*, in Sir *Edw. Cokes Reports*.

But it seemed to those which held this last opinion, That if a Lessee for years, Tenant at will, or a Copiholder, be Forceably put out, or held out by any stranger, if they will have restitution, their Indictment must be made and preferred in the Lessor, or Lords name; and the Jury must find that the Lessor, or Lord of such Copihold, is disseised, and the Lessee or Copiholder, is put out with force. And hereupon the Lessor or Lord shall have restitution; and so by their restitution, their Lessee or Copiholder is restored also: But such Lessee or Copiholder cannot (say they) prefer an Indictment in their own name, upon the Statute 8 H. 6. for that they have no Freehold.

And to that purpose I find some Precedents of Indictments in this form, That is to say, Into one Messuage at, &c. then being the Freehold of M. D. Esquire with Force and Arms, &c. with strong hand, and unlawfully upon the possession of J. L. then Fermor of the said M. D. the said Messuage did enter, and him the said J. L. with force, and arms, and strong hand, and unlawfully then did from thence expel and put out, and the said M. D. thereof did unjustly Disseise, &c. See after *tit. Precedents*.

Also by this opinion, if a Lessee for years, Tenant at Will, or a Copiholder, be forceably put out by their Lessor or Lord, such Lessee, or Copiholder, hath no remedy at all by Indictment upon this Statute, for they have no Freehold, and therefore can have no restitution upon this Statute.

Also by this opinion, if the Lessee for years be put out by his Lessor, and after the Lessee putteth out the Lessor again Forceably, the Lessee shall not be indicted; neither shall the Lessor have restitution upon this Statute, for that the Lessor is not ousted nor disseised of his Freehold: For the possession of the Lessee is such a Seisin of the Lessor of his Freehold, that he may have an Affize if his Lessee be put out.

And so of a Copiholder, not having forfeited his estate, if his Lord notwithstanding shall enter upon him, and put him out, and the Copiholder shall re-enter upon his Lord with force, the Copiholder shall not be indicted, nor yet the Lord restored for the reason aforesaid.

And so by this last opinion, the very mischief specified and intended to be helped by these Statutes, should seem still to remain in all cases between such Lessees and Copiholders, and their Lessors or Lords, so as there can be no inquiry nor restitution in cases of Forceable Entry or Detainer between them.

But howsoever the Law be taken for the Indictment or Restitution thereupon, yet in case that Lessee for years, Tenant at Will, or a Copiholder, be forceably put out or held out, either by a stranger, or by their Lessor or Lord, the Justice of Peace, or any one of them, by the Statute of 15 Rich. 2. cap. 2. might safely remove the force, and upon view thereof commit the offenders to prison; and then the Lessee for years or Copiholder, might presently re-enter, if peaceably they could so do, and so might have his possession again, without any restitution made him by the Justices.

But now by the said Statute made 21 Jac. c. 15. It is Enacted, Such Justices or Justice of Peace, as by reason of any Act of Parliament now in force, are authorized upon Inquiry to give restitution of possession unto Tenants of any Estate of Freehold, of their Lands, Tenements, which shall be entred upon with force, or from them with-holden by force, shall now have the like and same authority (upon Indictment of such Forceable Entries, or Forceable With-holdings before them duly found) to give like restitution of possession unto Tenant for term of years, Tenants by Copy of Court Roll, Guardians by Knights Service, Tenants by Elegit, Statute Merchant, and Staple, of Lands or Tenements by them so holden, which shall be entred upon by force, or holden from them by force.

§. 9.  
Weapons.

Now to shew something more, what the Law accounteth to be force, and what Weapons be offensive, in these and the like Cases.

Master Bracton saith, *Omnes illos dicimus armatos, qui habent cum quibus nocere possunt.* Which have any thing about them, wherewithal they may strike or hurt.

And therefore to have Harness, Guns, Bows, and Arrows, Cross-bows, Halberts, Javelins, Bills, Clubs, Pikes, Pitchforks, or Swords, not usually born by the parties, shall be said to be *vis armata*.

Again, *Si quis venerit cum armis, & dejecerit, vis tamen armata dicitur, sufficit enim terror armorum.*

*Si quis venerit sine armis, & in ipsa concertatione, ligna sumpserit, fustes aut lapides, vis dicitur armata.*

And so to use casting Stones, hot Coals, scalding Water, or Lead, or any other thing wherewith one may hurt the person of another, shall be said to be *vis armata*, armed force, or force with arms.

#### Lawful Force. CHAP. CXXVII. v. 78.

§. 1.

**W**Here a Force, or Forceable Defence is justifiable; and where not.

Force being opposed against the Law, is utterly forbidden; but being used in the maintenance of the Law, and with the Warrant of Law, it is allowed, for that it maintaineth the Peace of the Realm: And therefore force may lawfully be used by all the Kings Officers, Ministers, and Subjects thereunto deputed for the Execution, or advancement of Justice, or of the Judgments of the Law.

And so first it is a Lawful Force, whereby all Offenders in Treason, Felony, and other great Crimes, be pursued, apprehended, carried to Prison, and receive their condign punishment.

It is a Lawful Force, whereby the Sheriff, and his Officers, do apprehend any person by virtue of the Kings Writ.

It is a Lawful Force, whereby Justices of Peace do remove unlawful Entries, or Holdings of Possessions, and repress Rioters, and do arrest and send to Prison such offenders.

And in these, and the like Cases, the Kings Officers (sc. the Sheriff, Justice of Peace and Constable) may take the help of others (what number they shall think meet) to assist them, when need shall require. See hereof, *Postea, in tit. Posse Comitatus.*

Also it is a Lawful Force, which Justices of Peace, Sheriffs, Coroners, and Constables, shall use in apprehending, or committing to Prison such as within their several Jurisdictions, and in their presence shall in any sort break,

break, or attempt to disturb or break the Peace, and they may therein take the assistance of others, as aforesaid.

**P. R. 14.** Also in these Cases following, it is lawful for the Kings Officers, by force to break open a Mans house to arrest Offenders being therein, if the doors shall be all shut, so as the Officer cannot otherwise enter the house, viz.

**Co. 5. 91.** 1. For the apprehending of any person for Treason, Felony, or Suspicion of Felony. 13 E. 4. 9. Br. Coron. 159. §. 2.

2. Where one hath dangerously wounded another, and then flying into an house, the Constable or other Officer upon fresh Suit, may break open the door, and apprehend the Offender.

So may any other person besides the Officer, as it seemeth. 7 E. 3. 19. *Crompt. 171.*

3. Where there shall be an affray made in an house, and the doors shut, the Constable, &c. may break into the house to see the Peace kept.

4. So upon a Forceable Entry, or Detainer found by Inquisition, before Justices of Peace, or viewed by the Justices themselves. See here *Chap. 22.*

5. Upon a *Capias Utlagatum*, in any Personal Action, as also upon a *Capias pro fine*, directed to the Sheriff, the Sheriff may break open the doors, &c. 27 Aff. 35.

6. Upon a Warrant or Process, for the apprehending of any Popish Recusant, being Excommunicate, the Officer may break open the house. 3 Jac. 4. P. Rec. 52.

7. Upon a Warrant for the Peace, or Good Behavior, the Constables may break open the house, by the opinions of *Popham* and *Clerk*, Justices of Assize, at *Cambridge Assizes*, 3 Jac.

8. Lastly, in all Cases where the King is Party, or hath interest in the business, the Officers may break open the doors, as aforesaid: For no Mans house shall be Castle against the King, *Co. 5. 91.*

**Co. 5. 91.** And yet the Sheriff, nor his Officers may not break open any Mans house, to execute the Kings Process (upon the Body or Goods of any person) at the sute of any Subject. *Co. 5. 92, 95.*

But when a house is recovered by any Real Action, or by *Ejectione firma*, there the Sheriff may break open the house, and deliver Seisin or Possession to the Demandant or Plaintiff, &c. For after Judgment, it is no more (in the Right or Judgment of Law) the house of the Tenant or Defendant, *Co. 5. 91.*

**Co. 5. 91.** But note, that the Officer before he break open the house or doors of any person, he must first signify the cause of his coming, and desire that the doors may be opened unto him.

**Co. 5. 91.** Note also, although no Man may forcibly keep his house against the Kings Officers in the Cases aforesaid, yet every Mans house is (to himself, his Family, and his Goods) as his Castle, as well for his defence against injury and violence, as also for his repose and rest. And therefore the Law doth give to dwelling houses divers priviledges.

1. First, That it is a Mans Castle for his defence, as aforesaid. See *Plac. infra.*

2. Also a Mans house hath a priviledge to protect him against any arrest by force of any Process, at the sute of any Subject, as aforesaid.

**Call. 8.** 3. A Mans house (in some cases) hath a priviledge against the Kings Prerogative, for it hath been adjudged, that Saltpeter-men cannot dig in the Mansion-house of any Subject, without his assent, in regard of the danger

§. 3.  
Forceable  
Defence  
lawful.



danger that may happen thereby, in the night time, to the owner, his family, and goods, by Thieves and other Malefactors; *Co. 11. 82.*

4. If Thieves shall come to a Mans house, to rob or murder him, he may lawfully assemble company to defend his house by force; and if he or any of his company shall kill any of them in defence of himself, his family, his goods, or house. This is no Felony, neither shall they forfeit any thing therefore. *Co. 11. 82.*

5. Also a Man that is in possession of a house peaceably, and doubteth that another (who indeed hath more right to the Possession, and who may enter) will enter upon him, here he which is in Possession, may defend and keep his Possession of the house with his ordinary company, and may justifie to beat the other, which shall attempt to enter upon him: But if he kill him, it is Felony; nay, he in Possession (in this former case) may not hire any strangers to aid him, neither may he have his own ordinary company in armor, nor otherwise be provided with Bows or Guns to shoot at the other, as it seemeth, *Crompt. 70. a.* See after, *tit. Homicide, cap. 98.*

§. 4. Also, if a Man being in his house, do hear that another will come thither to beat him, he may lawfully assemble his Neighbors and Friends, &c. To assist and aid him there in defence of his person: *21 H. 7. 36. Dr. Noun. 1. Co. 11. 82. & 5. 91.*

And yet if he, or any of his Company, shall kill the other (or any of the other company) in such defence of himself, or his, this seemeth to be Felony in all of them which be in the house, and in that action; so as they shall forfeit their Goods thereby. See hereof after, *tit. Homicide.*

But if a Man be threatned, that if he come to such a place, that then he shall be beaten. In this case he may not assemble any company to go thither to safeguard his person; for there is no necessity of his going thither; besides, he may have surety of the Peace against such as threatned him. *21 H. 7. 36. Co. 11. 82. & 5. 91.*

And if another shall make any assault upon me, yet if I may escape with my life, it is not lawful for me by the Law to beat the other who made the assault, *per Markham. Quod tota curia concessit. 2 Hen. 4. fol. 7. Fitz. Bar. 72. Vide hic before, tit. Surety for the Peace, cap. 72.*

§. 5. If there be an attempt made to beat a Man, his Wife, Father, Mother, or any of his Children (within age) he may lawfully use force to resist it, and may justifie the beating of the other in such case. *9 E. 4. 11. 16 E. 4. 13.*

Also the Servant may justifie to beat another in defence of his Master. *Br. Trn's. 217. hic cap. 72.*

But yet by the opinion of *Eliot, 21 H. 8. fol. 2. b.* it is not lawful forceably to touch the person of a Man, except that there be so great peril, that another is like to perish, if he have not help. And there I may bear one man (saith he) to save the life of another; so that where the life of another is in danger, there any Man (though a stranger) may lawfully resist it, and that with force and beating of the other. See *Chap. 72.*

§. 6. Also a Man may justifie to beat another in defence of the Possession of his Goods. And if another hath taken away my Goods, I may take them again from him with force. But a Man cannot justifie the wounding of another in defence of his goods. And this was the opinion of *Wray, Chief Justice, An. 25 El.* *Crom. 61. 69. Crom. 94.*

And note, That every one may take and detain with force his own Goods: And the issue in an Action of Trespass brought therefore shall be, Whether the party hath interest or title to the Goods, or no; and not whether he used any force in getting them; and if it be found for the Defendant,

Defendant, the Force is excused: But the Force used in an Entry into Lands or Tenements, is the material matter, and punishable, although the Entry might have been lawful.

Also, if there be an attempt made to Disseise me of my Land, or to disturb me of my Highway, or to turn an ancient Water-course from my Mill, I may lawfully use Force to resist it. See *tit. Surety for the Peace, cap. 72.*

A Keeper doth enter and chase upon my Land, pretending this to be within his Purliew, where it is not. If I command my Servants to beat him off my Ground, this seemeth justifiable in the defence of my Possession, against such unlawful Claim. Yet *quare.*

Where Forceable Detainer of Possession is lawful. CHAP. CXXVIII.  
*Vide 79.*

8 H. 6. c. 9.  
31 El. 11.  
P. Force 4. **T**HE Statute of 8 H. 6. concludeth thus, Provided that such as keep their Possession by Force, after that they, or their Ancestors, or they whose Estate they have in such Lands, &c. have continued their Possession in the same three years, or more, shall not be indamaged by force of that Statute. §. I.

And by force of this Statute and Proviso, every Heir, and every Feoffee, may justifie to keep their Houses and Possessions by force, in that case themselves, or their Ancestors, or their Feoffors, or they whose Estate they have, have been in Peaceable Possession thereof by the space of three years, or more. *Cro. 187.*

22 H. 6. 6.  
14. b.  
Br. Force 6.  
22. & 29.  
See the Statute of 31 El. 11. Yet this Proviso must (as it seemeth) be thus construed, *sc.* That where a Man is seised (of a lawful Estate or Possession) of an House or Lands, and he or his Ancestors, or they whose Estate he hath therein, have continued the Possession of the same peaceably by the space of three whole years together without interruption, (and his Estate not ended) there he may hold and keep such Possession with force, against all others; yea, it seemeth, if he shall hire strangers to aid him, to keep such Possession, or shall have his company in Armor, he is not punishable by these Statutes: But he may not resist the Justices of Peace that shall come to view this.

P. R. 37. And if he shall be indicted for such his Forceable holding (after three years, such quiet Possession) he may plead such his lawful and peaceable Possession, by the space of three years next before such Indictment, and thereby he shall avoid both the Imprisonment and Fine; and also shall debar the other party of his restitution. Neither may the Justices of Peace remove him from his Possession, though it be found by the Inquisition taken before them that he held that House or Land by force, after three years lawful and peaceable Possession, as aforesaid.

But here it seemeth, that these four diversities are to be observed:

6 & 7 E. 6.  
22 H. 6. 8.  
Lamb. 65.  
Br. Rest. 12. First, Where the Party in Possession did enter peaceably, and where §. 2. forceably: For if a Man enter forceably, and after continue his Possession peaceably by the space of three years without interruption, yet (it seemeth) he shall not be aided by these Statutes.

Br. Force 22, & 39. Secondly, Where the Party in Possession hath continued his three years Possession peaceably, and where by Force.

For if after a lawful and peaceable Entry, a Man shall continue or hold his Possession by Force. This is a Forceable Holding or Detainer, and punishable by the Statute of 8 H. 6. And three years of such Possession shall not aid him, as it seemeth.

Thirdly,

Thirdly, Where the Party in Possession, is in by Right, and of a lawful State, and where by wrong. And therefore if the Disseisor (or other person that cometh in by a wrongful and unlawful title) hath continued such his Possession peaceably by the space of three years, without interruption: It seemeth he shall not be aided by either of these Statutes of 8 H. 6. or 31 El.

For if a Disseisor hath continued his Possession forceably by the space of twenty years together, yet he may be indicted upon the Statute of 8 H. 6. before a Justice of Peace, of the Forceable detaining of the same; and the same being found, the said Justice of Peace is to re-seise the same, and to award Restitution to the Party disseised, or so put out.

Fourthly, Where the Party hath continued such his Possession three years without interruption, and where his Possession hath been interrupted or discontinued.

For if a Man hath been in peaceable Possession of Land, &c. by the space of three years, and above, by a good title, and then is disseised and expelled by force, and the Disseisee re-entereth peaceably; or the Disseisor is therefore indicted upon the Statute of 8 H. 6. and the Disseisee is thereupon restored, and is in Possession accordingly; yet in these cases the Disseisee cannot justify the Detainer of the Possession of those Lands by force, because his Possession was once interrupted: But after, (such interruption and re-entry, or restitution) if he shall continue a peaceable Possession again for three years together, then it seemeth he may justify the Detainer of the Possession thereof by force, by vertue of the Proviso in the Statute of 8 H. 6.

If a Disseisor hath continued his Possession peaceably three years, and after the Disseisee doth re-enter, or doth make his Claim so near as he dareth, and then the Disseisor re-enters again, or continueth his Possession (after such Claim) here the Disseisor cannot justify to hold the same with force; for by the re-entry or claim of the Disseisee, the first Disseisin and Possession of the Disseisor was determined, and the Disseisor is in of a new Disseisin.

Also, if he that hath been a lawful Possessor of Lands by the space of twenty years together, be once clearly and wholly removed from the Possession of the same Land, he cannot come with force, or multitude, to put himself in Possession thereof again, and to detain the same with force, because his Possession was once interrupted: And if he be indicted (upon the Statute of 8 H. 6.) for such Forceable Entry, he shall not be relieved (touching the Restitution) by the Statute of 31 Eliz. for that he had not the occupation of the said Lands, nor had been in quiet Possession thereof by the space of three years together, next before the day of such Indictment found.

*How many several Remedies the Party hath, which forceably and actually is either put out or kept out of the Possession of his Houses or Lands, &c. contrary to these Statutes. CHAP. CXXIX. V. 80.*

1. Action upon the Statute of 8 H. 6.

First, The Party so grieved (having an Estate for Life, in Tail, or Fee) may have his Assize, or Action of Trespas of Forceable Entry upon the Statute of 8 H. 6. against such Disseisor; and therein if the Defendant be attainted of Force, he shall fine to the King, and also answer to the Plaintiff his treble damages, and treble costs of Suit; and also the Plaintiff shall

21 H. 6.  
18. b.  
Fi. Entry  
20.  
Br. Force  
6.  
Vid. 23 H.  
8. p. 169.

14 H. 7. 28  
Br. Force  
10.

Br. Force  
Dyer 141.  
22. R. 19.

23 R. 2.  
Br. Force  
C. 11.  
Lin. 43.

Dyer 14

4 H. 4. c. 8.  
1 R. 2. c. 9.  
8 H. 6. c. 9.  
P. 2.  
F. N. B.  
348. c. 8.  
240. 2.



Co. 10. shall thereupon have a Writ of Restitution to restore him to his former  
146. Estate. Co. L. 257.

But (this Action being at the Suit of the Party, and only for the Right) this Remedy (by Action) is only where the Entry of the Defendant was not lawful: For if a Man entrench with Force, where his Entry is lawful; as if a Disseisee shall enter upon the Disseisor with Force, he shall not be punished by way of Action: But yet he may be indicted upon the Statute and upon such Indictment found, the party put out (sc. the Disseisor) shall be restored; for the Indictment is for the Force, and for the King. And here the offender (sc. the Disseisee) shall make fine to the King, although his Right be never so good. Br. Forc. 11. 15 H. 7. 17.

Secondly, Also the Party so grieved, if he will lose the benefit of his treble Damages and Costs, he may be aided, and have the assistance of the Justices of Peace, and that after divers sorts: First, he may purchase a Writ out of the Chancery (directed to the Sheriff only, or to the Sheriff and Justices of Peace, and to every of them) for to remove the Force: And this is upon the Statute of Northampton, 2 E. 3. c. 3. the form of which Writ you may see. F. N. B. f. 249.

But upon this Writ, the Justice of Peace is to proceed only as a Minister, and is to certify his doings herein; and that Justice of Peace to whom the Writ shall be delivered, ought for to execute it, sc. he may remove the Force: But here he may not put the Party in Possession again, who was put out.

For the manner of the Justices proceeding herein, see in the other title of Forceable Entry before.

Thirdly, Also the Party grieved, may at the General Sessions of the Peace, within the same County, prefer his Bill of Indictment, upon the Statute of 8 H. 6. for such Forceable Entry, or Detainer: Which being found there, the Complainant shall be restored to his Possession by a Writ of Restitution, granted out of the same Court to the Sheriff.

Also the Party so grieved, for a more speedy remedy, may complain to any one or more Justices of the Peace of the same County, of the said Force; and thereupon the said Justices of Peace may, *Ex Officio*, and without any Writ, either do Execution of the Statute of Northampton as aforesaid; or else the said Justice of Peace, upon such Complaint, must go to the place where such Force is, to see it, and to remove the Force, and to arrest and commit the offenders, and shall also keep a special Sessions to inquire of the said Force. And if upon such inquiry, such Force shall be found, then the said Justice shall restore the Party grieved to his Possession again; and here no other Justice of Peace can grant a *superseas* to stay the same Restitution.

See more hereof before in the other title of Forceable Entry.

Also the Party grieved may remove such Indictment, found either at such General or Special Sessions, by a *Certiorari* into the Kings Bench, and the Judges of, that Court may award a Writ of Restitution, to the Sheriff of the County, to restore Possession to the Party.

Now when the Justice of Peace shall make such inquiry, he shall direct his Precept or Warrant, to the Sheriff, commanding him to cause to come before the said Justice of Peace at some good Town there near, Twenty four sufficient and indifferent persons dwelling near to the said Lands or Tenements (whereof every one shall have in Freehold Lands, or Tenements, Forty shillings, by the year, at the least) to inquire upon their Oaths of such Force, &c. See before in the other title of Forceable Entry.

Upon

Upon default of appearance of those Jurors, the Justice of Peace may award an *Alias*, and after that *Pluries infinite*, till they come; but so that at the day of the second Precept, or Writ, the Sheriff must return Forty shillings in Issues, upon every one of them, and at the third Writ Five pound; and at every day after, the double.

And although any of such Jurors shall not have Forty shillings Freehold Land *per annum*, yet their Presentment of such Force is good for the King, so as the offenders shall fine therefore to the King; but whether the Party shall have Restitution upon such a Presentment, it being pleaded or shewed at the time of the Restitution to be made, seemeth a doubt.

If the Sheriff shall return smaller Issues upon the Inquirors than the Statute doth appoint, yet the Party indicted shall not impeach the Inquiry therefore.

Neither is it cause to impeach the Inquiry, though the Justice of Peace do not go to see the place where the Force is. *Marow.*

And it is convenient upon such Inquiry, that the Evidence be given openly to the Jury, to the intent it may appear to the Justice of Peace, or Court, whether there shall be reasonable cause to stay Restitution, or no, after the Indictment found. See *Dyer* 122.

Of Restitution to be made to the Party put out. CHAP. CXXX.  
*Vide* 81.

**§. 1.** *Restitution.* I Will here shortly recite the words of the Statute, which for this business of Restitution will give the better light.

And if upon such Inquiry, it be found before the said Justices that any have done contrary to this Statute (*viz.* have entred, or held with force) the said Justices of Peace, &c. shall reseat the said Lands or Tenements so entred upon, or holden, and put the Party so put out, in full Possession of the same Lands and Tenements so entred upon and holden, as before.

Here we see, that after such Forceable Entry, or Holding, so found by Inquiry, the said Justices of Peace, &c. shall reseat the said Lands or Tenements, and shall remove the Force (*sc.* all such offenders as shall be found in the house, or upon the Lands, that either entred or held with Force) and upon the Prayer of the Party so put out, the said Justices of Peace shall restore him to his Possession again.

And herein the Justices of Peace need not stay, or stand upon the right and title of either of the Parties. See hereof a little after.

But no Restitution shall be made, but where the Forceable Entry, or Detainer, is first found by Inquisition. *Br. Force* 27.

**§. 2.** *Indictment the Form.* Concerning the Inquisition or Indictment, the Justices of Peace shall do well to peruse and regard the same, to see if it be sufficient; for the Justices of Peace ought not to award Restitution, where the Indictment shall appear to them to be any way insufficient in the Law, either in Matter or Form.

1. First therefore to have Restitution, the putting out (by express words) must be in the Indictment, and found by the Inquisition: For another Man may enter upon me, and yet not put me out, and then there needeth no Restitution to be made by the Justices.

And this putting out is to be understood only of House or Land, and not of a Rent, Common and Advowson, and such like, into which an actual Entry cannot be made; and therefore none shall have Restitution, but such only as are put out of House or Land. See before under this title.

2. Also

Lamb. 481  
Br. Force  
23

2. Also the Indictment ought to express the quality of the thing entered upon, &c. *sc.* Whether it be a Messuage, Cottage, Meadow, Pasture, Wood, or Land Arable: For if the Indictment be, that by strong hand they did enter the Tenement, &c. It is void for the incertainty, because the word *Tenement* may extend to either of them.

H. 6. 16.  
Br. Force  
13

3. Also the Indictment must have these words, to wit, yet hold out, otherwise the party shall have no Restitution; and yet these words be not in the Statute: But without these words in the Indictment, it may be supposed and thought, that he which put me out, hath left the Possession again, or that I have gotten it again; and then the Restitution is needless.

So as in every such Indictment, these words are material, *sc.* *Expulerunt, & adhuc extra tenent.* And for lack of either of these words, no Restitution shall be made or awarded.

Lamb. 145

4. Also one of these two words, with strong hand, or with multitude, seem to be material in the Indictment; unless they be implied by reciting the Statute of 8 H. 6. and concluding, against the form of the Statute, or by some other words in the Indictment. See the Precedents herein.

For the form to be used in these Indictments. See more after *tit. Indictments.*

Crompt.  
162.

If a Man shall be restored upon an insufficient Indictment taken before the Justices of Peace; and this be removed into the *Kings Bench*, the Court there will cause the party to be restored, that before was put out by the Justices of Peace.

Crompt.  
166. b.

5. Also if Error or Insufficiency be in the Indictment, taken before the Justices of Peace, and yet a Precept or Writ of Restitution is awarded by them, any two of those Justices of Peace, which were present at the taking of the said Indictment, upon the Prayer of the party, may (at another Sessions, or out of the Sessions) grant and award a *Superfedeas* to the Sheriff to stay the same Restitution, if the Sheriff had not made Restitution before the *Superfedeas* came to his hands.

Dyer 187.

But no other Justice of Peace (besides those which were present at the taking and finding of the said Indictment) can grant a *Superfedeas*, if the Indictment were found at a special Sessions. And if it were found at the Quarter Sessions, yet the *Superfedeas* shall be granted under the *Teste* of one of those Justices only which were present at the finding of the Force. *Ibidem.*

Crompt.  
166.

A Man is indicted that he entred with Force, and held with Force, and upon the Traverse, it is found that he entred with Force, but not that he held with Force; yet this Indictment seemeth good enough, and the party shall be restored.

Hil.

So two are indicted of a Forceable Entry and Detainer, and upon the Traverse, it is found, That the one entred with Force, and the other held or detained with Force, yet the party shall be restored. *Br. Force 15.*

Crompt.  
166.

If it be found by one Inquest, that A. put me out by force, and by another Inquest, that I did put out A. by force, either of us may pray to have Restitution against the other: But he that is first restored is in the worst case; for the other may have Restitution afterwards, and then he that had Restitution first, is without remedy, by the hands of the Justices of Peace; saving that he may re-enter, if he can peaceably, or have his Action. *Br. Force. 6.*

Br. Force  
36.

If it be found by one Inquest, that A. put me out by Force, and by another Inquest taken at the same Sessions, that B. did put me out by force, I may chuse upon whether of these Indictments I will be restored: And if I have Restitution against A. and this be returned, I cannot have Restitution

6. 3.  
Several Indictments.



upon the other. But if (upon the Writ of Restitution) it be not returned that I have Restitution, then I may afterward have Restitution against B. upon the other verdict if B. hath re-entred upon the first Restitution made to me. *Marrow.* Crompt. 165.

A. is disseised, or put out with Force by B. and after B. is put out with Force by C. And all this is found by one and the same Inquisition. Here B. may have Restitution against C. (for B. hath more right to the Possession than C.) and then may A. have Restitution against B. But upon this Inquisition, if A. have Restitution first, then B. shall not have any Restitution, otherwise, if these had been found by several Inquisitions.

*Who shall Award and make this Restitution.* CHAP. CXXXI. V. 82.

**A**FTER the Force is found by the Inquest, the Justice of Peace (before whom the said Force shall be so found) may himself put the party in Possession again; or he may make his Precept (under his own *Teste* alone) to the Sheriff to do it, *Dyer* 187.

The Form of the Precept to the Sheriff to make Restitution. See *posse*, *tit. Precedents*.

But no other Justice of Peace hath any Authority (by the Statute) to grant or award Restitution, but only he or they before whom the Force was found by Inquisition. Nay the Justice of Oyer and Terminer, nor the Justice of Gaol-delivery cannot grant Restitution, nor the Justices of Peace at their General Sessions of the Peace, cannot grant this Restitution, except the Indictment were found before them. And yet by some opinions, if it shall happen that the Justice of Peace, before whom such an Indictment shall be found, before Restitution made shall happen to die or to be removed, then may the residue of the Justices of Peace at their General Sessions of the Peace grant a Writ of Restitution. Dyer 115. 4 R. 2. 163. 164.

Also the Justices of the *Kings Bench* (in regard of their supream authority in all Cases of the Crown) either upon Certificate, or delivery (to them made by the Justice of Peace before whom such Force was found) of the Presentment of such Force; or if the said Presentment, or Indictment shall be removed before them by *Certiorari*, in both these Cases the Justices of the *Kings Bench* may award Restitution. See before in the other title *Forceable Entry*, *Fitz. Entry* 36. & *Cro.* 159. Co. 11. 163. 164. 4 R. 2.

But neither the Justices of the *Kings Bench*, nor any other (besides him or them that made the Inquiry) can personally restore the party, but only by way of Precept to the Sheriff. Lamb. 164.

The Sheriff (if need be) may take the power of the County, to execute the Precept of the Justices of Peace herein.

And if the Sheriff upon such a Precept, or upon a Writ of Restitution from the Sessions, &c. shall return that he cannot make Restitution, for resistance, &c. he shall be amerced for making such a Return, because in such Cases he might have taken the power of the County to assist him therein. See the like case, *Fitz. Execution* 147. Lamb. 164.

Note, that the same Justices or Justice of Peace, before whom the Force was found by Inquisition, and which have granted his or their Warrant to the Sheriff, to make Restitution, may afterwards grant his or their *Superfedeas* to the Sheriff to stay the same Restitution, But no other Justice or Justices of Peace, hath or have authority to grant any *Superfedeas* in such case, &c. See *Dyer* 123. & 187. Fitz. d. P. R.

To whom Restitution shall be made. CHAP. CXXXII. v. 83.

R.R. 38. **T**His Restitution ought to be made to him that was put out, and to none other; for so are the words of the Statute. §. I.

Therefore if the Father be out by Force, and dieth, his Heir shall not have Restitution; yet here the Justices may imprison, and fine the offenders: For by such Forceable Entry they have broken the Peace. See *antea*, in the other title of *Forceable Entry*.

Lamb. 156. Also, if after the death of the Father, a stranger abateth, or entreth into his Land by Force, before the Heir hath gotten Actual Possession indeed, the Heir shall not have Restitution, because he had but a Possession in Law, descended upon him.

Fitz. 248. The Disseisor doth put the Disseisor out with Force, the Disseisor shall be restored: For the Right or Title is not commonly disputable or material; but by words of the Statute, he that is in such sort (*sc.* forceably) put out, shall be restored.

Dyer 122. Yet it seemeth in this case, That upon Traverse tendred by the Disseisor, and his Right appearing, the Justice of Peace may stay Restitution. See hereof after under this Title.

Br. Force 6. Also, if the Disseisor be restored again, yet the Disseisor may after re-enter peaceably, or have his Affize. *Fitz. Entry* 20.

Crompt. 163. But if the Disseisor shall enter peaceably upon the Disseisor, and so they both shall abide and continue there together for divers days, and after the Disseisor doth put out the Disseisor with Force, and is thereof indicted. Here it seemeth the Disseisor shall not be restored; for the Disseisors Possession was avoided in quiet manner at the first Entry of the Disseisor, and so the Disseisor had no Possession in the Eye of Law when he was put out.

Crompt. 162 & 164. If the Disseisor shall enter peaceably, the Disseisor and his Family being abroad, and after the Disseisor shall keep his Possession with Force, the Disseisor shall not be restored, by reason of the eign title of the Disseisor, and for that he entred peaceably. See *antea*, in the other title of *Forceable Entry*.

But here the Disseisor shall be imprisoned and fined for keeping his Possession with Force; for Forceable Keeping or Detaining, is as well prohibited as Forceable Entry.

Crompt. 164. Fitz. li. And here note, That the being of a Mans Wife, Children, or Servants, Possession. in the House, or upon the Land, do preserve his Possession; but his Cattel being upon the Ground, &c. do not preserve his Possession.

Li. 140. Per. 45. Also when two are in Possession of an House, &c. and the one claimeth by one title, and the other by another title, here the Law shall adjudge him to be in Possession, who hath the best Right to the Possession: So that if A. shall wrongfully enter upon B. and they both shall continue in the House, and after B. shall put out A. with Force; A. shall not be restored, for A. never gained any Possession by his Entry.

Fitz. 249. Two Joynt-tenants, or Tenants in Common, and one of them doth forceably put the other out of his Possession; he that is so expelled, may have an Action of Trespass of Forceable Entry against his Companion, upon the Statute of 8 H. 6. And thereupon he shall have a Writ of Restitution to restore him to his former estate: But what the Justice of Peace can do herein, *Quere*, for that his Entry and Possession is lawful through the whole Land, in respect of his own moiety and state. See 8 E.4. 8.

Two Joynt-tenants be put out by Force, and one of them only sueth to have Restitution, Restitution shall be made unto him.

Whether a Copiholder, Lessee for years, or Tenant at Will, shall have Restitution. See before.

And the Lessee for years, or a Copiholder, &c. may pray, and shall have Restitution, as well as he in the Reversion, or the Lord.

If Lessee for years be put out of his Term by Force, and die, though after his death this Force be found by Inquisition, taken by a Justice of Peace; yet his Executors shall not be restored to that Land (by the Justice) for that they are not the same person that was put out.

"The Particular Tenant, as Tenant for years, or a Copiholder, shall be restored notwithstanding the Lord or Lessor (who have the Freehold) will wave it, or disagree to it as to themselves; and thereupon this case hapned. The Lord of a Mannor commanded A. B. and C. to enter with Force upon his Copiholder, which they did do, and an Indictment is preferred *quod expulerunt* the Copiholder, and Disseised the Lord which forced, and the Lord labored that no Restitution should be made; for that, as was alleaged, Restitution was to be made out of respect to the Freehold: Yet the Court granted Restitution to the Copiholder. For the Court ought to reform the wrongs in their several degrees; and that is, to restore the Copiholder first who is expelled. And so was done, as was said by Justice Williams in the case of the Lord Norrie who withstood a Restitution to his Lessee. Sir Audley Nomels case, Tolver. p. 81.

"The words of the Statute of 21 Jac. 15. are too strictly taken, and shall not be extended by Equity, and to that purpose this case hapned; an Indictment of Forceable Entry, was *Ad tunc exist. liber. ten. B. ad voluntatem Domini secundum consuetudinem manerii*. The party in this case, could not be restored, because it is not said *per Copiam rotulorum cur*. And it may be she was Tenant by the Verge, and not by Copy. But it was holden, that a Copiholders Widow that held *per bancum* should be restored. Lach, p. 182.

What Causes there may be for staying the Justice of Peace, from granting Restitution. CHAP. CXXXIII. v. 84.

§. I. **A**lthough the Party thus being Indicted for a Force, shall not be heard nor suffered to give his Title in evidence, to excuse himself of his Forceable Entry, or Detainer, to save his Fine due to the King for such Force (which Fine he shall make, though his Right be never so good;) yet to the Restitution (which the Complainant shall demand, if the Force be found) the Defendant shall be heard to disprove the Title of the Complainant, or what he can say otherwise for the stay of Restitution. *Quere*, and see before in the other title of Forceable Entry.

Now the Defendant (or Party indicted) for the stay of Restitution, may at the time of the Restitution to be made, plead or alledge any of these things following.

1. His quiet Possession by three years together.
2. He may deliver to the Justices of Peace or Court, a *Certiorari*. And this is a *superfedeas* to them. See the Statute 21 Jac. 8. hereafter.
3. He may tender his Traverse; but M. Lambert seemeth to doubt, whether the Party may be admitted to his Traverse before the same Justices of Peace. And he thinks it safer for the Justices to make Restitution, notwithstanding the offer of Traverse, or rather wisheth the Justices to deliver,

or



‘or certifie the Presentment into the *Kings Bench*, and so to refer the further proceeding to them, &c. See here after.

4. He may plead the insufficiency of the Indictment. See *Paulo antea*.

5. He may plead the insufficiency of any of the Jurors, *sc.* for not having forty shillings Freehold Land *per annum*, ‘and must not be Ancient Demesne or Copihold, but Charter Lands.’ And in this case Mr. Marrow is of opinion, That the party shall have no Restitution. Yet Mr. Lambert and Mr. Crompton seem to be of the contrary opinion. *Lamb. 155. Crompt. 165. Ideo quere.*

And it seemeth (by the opinion of Mr. Lambert,) That the Justices of Peace ought not to stay Restitution, save only, either by alledging three years quiet Possession, or by removing the Record and Presentment into the *Kings Bench* by a *Certiorari*. *Lam. 156.* §. 2.

35 El. 11. For the first, there shall be no Restitution awarded (upon any Indictment of Forceable Entry, or holding with Force) where the party indicted hath been in quiet possession by the space of three whole years together, next before the day of such Indictment found, if his Estate be not ended; and this the party indicted may alledge to stay the Restitution, and the Restitution upon this shall be staid by the Justice of Peace, until it be tried, if the other party will deny or traverse the same. And if the same allegation be tried and found against the party indicted, then shall he pay such costs and damages to the other party, as shall be assessed by the Justices before whom the same shall be tried; the said costs and damages to be recovered and levied notwithstanding by the course of the Common Law. *Three years Possession.*

31 Eliz. 11.

Also if a Man who hath made Forceable Entry or Detainer, be in doubt that he shall be indicted thereof before the Justices of Peace, (upon the Statute of 8 H. 6.) and that thereupon Restitution will be awarded against him, he may have a Writ of *Certiorari* out of the *Kings Bench* ready, and when the Bill of Indictment is found, he may presently deliver it to the Justice of Peace or Court. And this is *Superfedeas* to them for to stay the Restitution; for that upon this Writ, the said Indictment shall be removed from them into the *Kings Bench*. §. 3. *Certiorari.*

And although the Indictment be found after the Tasse of the *Certiorari*, it is not material, for they be both the *Kings Courts*, &c.

6 H. 7. 16. But if a *Certiorari* cometh to the Justice to remove an Indictment of Forceable Entry taken before the Justice of Peace in the Countrey, and the party will not sue to remove it, but suffereth it to lie still, the Justice of Peace may proceed to grant Restitution, notwithstanding the Writ, as *Hobart* the *Kings Attorney* said in 6 H. 7. But *Keble* held opinion against him; and it seemeth rather, that the Justice of Peace ought *Ex Officio*, to send the Indictment away, because they are commanded so by the Writ. And this Writ is a *Superfedeas* of it self to the Justices of Peace, to stay their proceedings: And if they shall proceed after, it is erroneous. *Br. Judges 17.*

After Restitution made by the Justice of Peace, if the other party doth remove the Indictment by a *Certiorari* of a more eigne date, than is the Indictment, the Justice of the *Kings Bench* may award Restitution back again: For upon the matter, the Justice of Peace had no power to make Restitution, for that the *Certiorari* hath relation from the date thereof.

After Restitution granted from the Sessions, and delivered to the Sheriff, the other party having a *Certiorari*, delivereth it also unto the Sheriff after the Sessions; the Sheriff shall not surcease thereupon (for he hath no authority to allow thereof.) But if the *Certiorari* were delivered to any

Justice of Peace, he may thereupon grant a *superfedeas* to the Sheriff. And if Restitution were made by the Sheriff before the said *superfedeas* came to his hands, then the other Party shall have Restitution back again in the *Kings Bench*, upon the Indictment removed thither.

But for that Bills of Indictment of Forceable Entry, or Riots, being found before the Justice of Peace are oftentimes removed by Writs of *Certiorari* out of the *Chancery*, or *Kings Bench*, by the means of the person indicted, by means whereof such offenders for the most part escape unprosecuted and unpunished; (for that the Party grieved will not undergo the travel or charge, &c. (It is therefore Enacted (by the Statute made 21 Jac. cap. 8.) That all such Writs of *Certiorari* shall now be delivered at some Quarter Sessions of the Peace, in open Court; and that the Parties indicted, before the allowance of such *Certiorari*, shall become bound unto such person which shall prosecute such Bill of Indictment against them, in the sum of 10 l. with such sufficient Sureties, as the Justices of Peace, at their said Quarter Sessions of the Peace, shall think fit, with Condition, to pay unto the said Prosecutors of such Bill of Indictment (within one moneth after the conviction of such Parties indicted) such Costs and Damages, as the said Justices of Peace in the said Sessions of the Peace shall assess or allow. And in default thereof, it shall be lawful for the said Justices to proceed to tryal of such Indictments, any such Writ of *Certiorari*, to remove the same Indictment notwithstanding.

"A Bill of Forceable Entry was found before Justices of Peace, and Restitution awarded, but not executed; a *Certiorari* was delivered to one of the Justices, who refused to open it without consulting with his Companions, and Restitution is made. This was moved in the *Kings Bench*, and the Restitution awarded, and the Justice of Peace chid, in the case of *Fitz-Williams, Telverton*, p. 32.

§. 4.  
Traverse.

The tender of a Traverse (to an Indictment of Forceable Entry, upon the Statute of 8 H. 6.) is no *superfedeas*, but in discretion; so as the Justices of Peace or Court (notwithstanding the Traverse tendred) may grant or may stay the Restitution at their discretion, according as the truth of the right or title shall appear to them: And so is the use of the *Kings Bench*, *Dyer 122. pl. 34.*

Or else the Justices of Peace (before whom the Indictment was found) may after Traverse tendred, certifie or deliver the Indictment into the *Kings Bench*, or to the Quarter Sessions, and so refer the further proceedings therein to them.

But if the Party indicted shall tender a Traverse presently, whereupon Restitution is stayed, and after he shall not pursue his Traverse with effect (but discontinueth it) and after doth tender another Traverse upon Restitution prayed at another time; the Justices of Peace, or Court, shall do well to proceed to grant Restitution, notwithstanding such Traverse tendred. Crompt. 165.

And it is the Course of the *Kings Bench*, that he that tendreth the Traverse there (upon such an Indictment) shall bear all the charges of the tryal, and not the King, nor he at whose Suit the Indictment was found: And the same reason seemeth upon an Indictment traversed before Justices of Peace. Ibid.

But upon a Forceable Entry found, and a Traverse tendred, if the Justices of Peace will try the Traverse, it seemeth they ought to cause a new Jury to be returned (by the Sheriff before them) to try the same Traverse. The which may be done the next day, but not the same day, *Crompt. 150, 152.*

Also

‘Also after the Indictment or Force found, if a Traverse be tendred, §. 5.  
 ‘or whatsoever shall be alledged for the stay of Restitution, it ought to be <sup>Pardon</sup>  
 ‘in Writing (and not verbal only;) for upon the Traverse, &c. a *Venire*  
 ‘*facias* must be awarded, a Jury returned, the Issue tried, a Verdict found,  
 ‘and a Judgment given, and Costs and Damages awarded: And they must  
 ‘have a Record, which must be in writing, to do all this, and not a Verbal  
 ‘Plea, *vid.* 14 H.8. 16. *Fitz.* And all this must be done at the same Sessi-  
 ‘on, if it be desired; or else Restitution is to be granted. *Semble auxi que*  
 ‘*Pardon le Roy*, will discharge the Forceable Entry or Detainer, and Bar  
 ‘Restitution.

Yelver-  
 ton, p. 99.

‘And in the Case of *Fawcet*, H. 4. *Jac.* the Forceable Entry was par-  
 ‘doned by a Parliament Pardon; and the Court was of opinion, Restitu-  
 ‘tion could not be granted: For by the Pardon, the strength of the In-  
 ‘dictment is gone, but there is a Remedy for the Party by Suit, where he  
 ‘may be sure of the effect of it. And Justice *Williams* said, That *Thynne*  
 ‘being indited for an Entry by Force, upon the Lands of the Lord *Staff-*  
 ‘*ford*, got the Kings Pardon, and pleaded it in Bar of Restitution; and it  
 ‘was adjudged a good Plea.

*Restitution where it shall be granted.* CHAP. CXXXIV.

‘IT is generally held and maintained as the Law, and Course of the §. 1.  
 ‘Court of *Kings Bench*, that Restitution is a thing in the discretion  
 ‘of the Court; and they will grant it, or deny it, as the Justice and Rea-  
 ‘son of the Case shall require: And therefore they will grant it ordinarily  
 ‘in these Cases.

‘1. If the Indictment removed, be for any cause appearing in the  
 ‘Body of it, or caption quashed.

‘2. If a *Cert.* hath issued, and the same be not allowed, or pro-  
 ‘ceedings stayed thereupon; but Restitution be granted after the allow-  
 ‘ance or tender of it.

‘3. If any indirect course be used to avoid the effect of a *Cert.*  
 ‘as I remember this case hapned. One *P.* having made a Forceable Entry  
 ‘upon *L.* of Lands in *W.* And being threatned with an Inquiry of a Force,  
 ‘he imployed one *C.* his Attorney, to procure a *Certiorari*, and gave the  
 ‘names of those that were most likely to be indicted: Which one *R.* the  
 ‘Attorney of *L.* suspecting, by pretending himself to be the Attorney of  
 ‘*P.* spake to the Clark in the *Crown Office*, understood the names of those  
 ‘for whom the *Certiorari* was intended to be made, and procured an In-  
 ‘quiry by the Justices in the Countrey, and such to be indicted as the  
 ‘*Cerciorari* was not for. So when the *Certiorari* came, it was insignificant,  
 ‘and *L.* was restored. But this matter appearing in the *Kings Bench*, H.  
 ‘1658. Restitution was awarded.

‘4. If the Justices below shall misbehave themselves, and shall not  
 ‘allow the Plea of three years Possession well pleaded.

‘But Restitution being as, I said, a thing Discretionall, the Equity  
 ‘and Reason of the Case doth often incline the Court, not to grant it  
 ‘where they may do it, especially if the Party in Possession shall offer to  
 ‘appear, and go to a speedy tryal of the Right; and so I have often ob-  
 ‘served it to be done.



## Riots. CHAP. CXXXV. v. 85.

Statute.

**I**T may easily and manifestly appear to all such as have been conversant in our Chronicles, how pernicious and dangerous to this Kingdom, unlawful Assemblies have been in all precedent ages, yea, such as at the first were very small, and began upon very small occasion; yet not being repressed in time, grew to such greatness and height, that they afterwards put in hazard the State and Government of this Land. And therefore it is behoveful and good wisdom for all Justices of Peace, to endeavor by all good means to quench the beginnings, and first sparks of such Assemblies, as knowing, that for want of timely restraint, they may soon grow to the like danger again.

Now for the better suppressing of such unlawful Assemblies, and partly for the better inabling of the Justices of Peace therein, there were three Statutes devised and provided specially by the wisdom of the Realm, and are remaining yet in force; that is to say, The Statute of 13 H.4. 7. 2 H.5. 8. & 19 H.7. 13.

The Statute of 13 H.4. authorising, nay upon a great penalty injoining the Justices of Peace (together with the Sheriff) to arrest, remove, and punish the offenders. 13 H.4. c. 7.

But for that the aforesaid Statute gave no remedy to the Party grieved, if the Justice of Peace, or Sheriff, should make default; as also for the better stirring up of the Justices in this business, the Statute of 2 H.5. was made, authorising the Lord Chancellor of England (at the instance of the Party grieved) to grant a Commission, to inquire of the defaults of the two next Justices of Peace and Sheriff, in not executing of the aforesaid Statute of 13 H.4. And withal providing, how the charges of the Justices, spent about the suppressing, and inquiry of such Riots, should be born; and also limiting what punishment, as well the offenders attainted of such Riots, as also all such as should not be ready to assist and aid the said Justice to repress such Rioters, should suffer. 2 H.5. 7.

And lastly, for that the two former Statutes did not express of what sufficiency the Jurors impanelled to inquire of Riots, should be; nor what Issues they should lose, if they appeared not; nor any certain punishment was inflicted upon the maintainers or imbracers of such Jurors: Therefore the Statute 19 H.7. was made. But so much of these things as concern the Justices of Peace, do appear more particularly here before: And therefore now I will proceed in this business. 19 H.7. 13.

*First, What shall be said to be a Riot, Rout, or unlawful Assembly, within the meaning of these Statutes.* CHAP. CXXXVI.

§. I. **A**N unlawful Assembly, Riot, or Rout, is where three or more shall gather together, come, or meet in one place, to do some unlawful act with violence, and that unlawful act must be *Malum in se*, and not *Malum prohibitum*. As when three persons, or more, shall come, and assemble themselves together, to the intent, to do any unlawful act, with force or violence against the person of another, his Possessions, or Goods. As to kill, beat, or otherways to hurt, or to imprison a Man; to pull down a House, Wall, Pale, Hedge, or Ditch; wrongfully to enter upon, or into another Br. Riots 4.  
Crompt. 61  
P. R. 19.

another Man's Possession, House, or Land, &c. Or to cut or take away Corn, Grass, Wood, or other Goods wrongfully; or to hunt unlawfully in any Park or Warren; or to do any other unlawful act (with Force or Violence) against the Peace; or to the manifest terror of the people; if they only meet to such a purpose or intent, although they shall after depart of their own accord, without doing any thing, yet this is an unlawful Assembly.

Br. Riot 4.

Lam. 179.

181.

Br. 4. 1

If after their first meeting, they shall ride, go, or move forward toward the execution of any such act (whether they put their intended purpose in execution, or not.) This is a Rout.

And if they execute any such thing indeed, then it is a Riot.

Br. 4. 5.

And yet by the opinion of some, a Rout is only where such a company (of three or more) are so assembled, for their own common or proper quarrel (and not in the quarrel of any other person.) As where the Inhabitants of a Town do assemble together to pull down a House, Wall, Pale, Ditch, or other Inclosure, pretending to have title of Common, or a Way there; or to beat a Man that hath done them some publick offence. But yet the word *Rout*, seemeth to have a more large and ample meaning, as appeareth by the Statute of 18 Ed. 3. c. 1. speaking of Riots that are brought in the presence of the Justices; and the Statute of 7 R. 2. c. 6. treating of Riding in great Riots.

Br. 4. 5.

Lamb. 180

Master *Finch* described them shortly thus, *Fi. lib. 2.*

An unlawful Assembly is, when above the number of two shall assemble to do any unlawful act.

A Rout is, when they set forward to do it.

A Riot is, when they do it indeed.

But at the Common Law (before the making of these Statutes) these Facts and unlawful Assemblies committed or done, were of none other qualities in their natures, than other common Trespasses; although sometimes by the discretion of the Justices, a greater fine was assessed in such cases, then was for other common Trespasses.

Now in Riots, Routs, and unlawful Assemblies, these four Circumstances are to be considered.

First, The number of the persons assembled.

Secondly, The intent and purpose of the meeting.

Thirdly, The lawfulness or unlawfulness of the act.

Fourthly, The manner and circumstance of doing it.

For the number, there must necessarily be three persons at the least, so gathered together; for else it can be no Riot, Rout, or unlawful Assembly, within the meaning of these Statutes.

'By the Statute 1 Ma. 12. & 1 El. 16. if above the number of two, and under twelve assembled together, had gone about unlawfully to kill any Subject, or to cast open any Inclosure, destroy any Deer, Coneys, Dove-house, or Fish, to pull down Houses, burn Stacks of Corn, or abate Rents, or prices of Corn, or Victuals, if they had not departed upon Proclamation, but should after attempt to do any of those things, they were to be imprisoned by the space of one year, without Bail. P. 20.

P. 16, 17.

By the same Statute of 1 Ma. 12. & 1 El. 16. if twelve persons, or more, assembled together, should have intended, or gone about to change any Laws, or to have done any of the former things, if they had not departed within one hour after Proclamation, it had been Felony in them all.

P. 31.

And by the same Statute, if the number had been forty, or above, that had assembled together, to the intent to have done any of the former things contrary to those Statutes, or any other felonious or rebellious act, if they had

§. 2.  
Circum-  
stances.

The number;

had continued together three hours after Proclamation, it had been Felony; but these two last Statutes stand now discontinued.

But an assembly of an hundred persons or more (yea, though they be in armor) yet if it be not in terror or affright of the people, and were assembled without any intent to break the Peace, it is not prohibited by any of these Statutes, nor unlawful. See *infra*.

§. 3. For the intent: It seemeth it can be no Riot, &c. except there be an intent precedent, to do some unlawful act, and with violence or force: Crompt. 6.  
P. R. 25.

And therefore, if divers be assembled, and none of them do know to what end or purpose they are met. This can make no Riot or Rout, till the intent be known. Lamb. 133  
Crompt. 6.

If the Master (intending to make a Riot) taketh with him his ordinary Servants, and maketh an affray, or other outrage with them. This is no Riot in the Servant, except their Master had made them privy to his intent before, but the Master only shall be punished for this. Yet, *quere*, whether this shall be adjudged, or punished in the Master as a Riot.

And in this former Case it is not material, though the number of his Servants that go with him are above his degree, so long as they be his Household Servants. *Law. 184. P. R. 25.*

If divers being lawfully assembled, shall quarrel, or fall out upon the sudden, without any former such intent. This is no Riot, but a sudden affray. Crompt. 6.

If divers be at an Ale-house, and without any intention of affray they suddenly fall together by the Ears. This is no Riot, but a sudden affray, because they had no such intention before. Lamb. 134

If a Jury being together, shall fall out and fight. This is no Riot, because they were lawfully assembled. Ibid.

Also where there be three or more gathered together, either to execute the Justice of the Law, or for the exercise of valor, and trial of activity, or for the increase of amity or neighborly friendship, (and not being met with an intent to break or disturb the Peace, or to offer violence or hurt to the person of any) such Assemblies be not prohibited by any of these Statutes, nor unlawful; as if the Sheriff, Under-Sheriff, or Bailiff, shall take Power (what number they shall think good) to execute the Kings Process, &c. It is lawful: So of other Officers. See more thereof *postea, tit. Posse Comitatus.*

So it is a lawful Assembly, which is gathered together to run at Tilt, &c. by the Kings Commandment. 3 R. 1.  
Br. R. 20.

So the assembly of People, and their use of harness upon *Midsummer* night in *London*, being only for disport, is lawful; and though it be with a great Assembly of people, and in armor; yet it being neither in affright of the people, nor *malum in se*, nor to do any act with force or violence against the Peace, it is lawful. Br. 1.

"If Stage-players, by their shows, occasion an extraordinary and unusual concourse of people to see them act their tricks; this is an unlawful Assembly and Riot: For which they may be indicted and fined, as *Coke* said. *M. 12 Jac. Rolls Rep. 2 part. p. 109.*

Also if divers do assemble and gather together, to drink at an Ale-house, or at a *Christmas* dinner, or at a match of shooting, or such lawful disport; or else to play at Footbal, Bucklers, Bearbaitings, Dancings, Bowls, Cards, or Dice, or such like unlawful Games or Disports. This is neither Riot, Rout, nor unlawful Assembly within these Statutes, nor here prohibited: For these Meetings usually are not with any intent to offer or do violence or hurt to the Person, Possessions, or Goods of any other; neither



neither are they *malum in se*, they are in themselves neither evil, nor unlawful; nor prohibited by the Common Law, though otherwise some of them are prohibited by Statute. See before *tit. Games unlawful*.

But if any of the persons assembled together for any the Disports above mentioned (or for the like) came with any intent or purpose to break or disturb the Peace, or to offer violence or hurt to the person of any, and shall make an affray, or do other outrage. This seemeth to be a Riot, in so many as came with any such unlawful intent or purpose.

Lamb. 184  
P. R. 25.

And if any of the persons assembled together (to drink, or play) at an Alehouse, or for any the Disports above-mentioned, or the like, shall fall out suddenly (without any former intention of an affray) and in that their falling out, they shall betake themselves to sundry parts, and shall make an affray, it seemeth (by the opinions of some) that this shall be adjudged a Riot in so many of both sides, as shall be Parties to that affray or quarrel. But *quære* hereof, for that it was without any such intent before their said Assembly, and done only upon the sudden, and upon a sudden occasion hapning after their said Meeting; and again, their said Assembly was at the first lawful, or at least not prohibited by any of these Statutes, nor yet the Common Law. *Co* 11. 87.

But otherwise, if by agreement they shall meet again, and fight afterwards, that maketh it a Riot, as being a new Assembly upon the former quarrel; and so their second Meeting was upon an intent precedent to do an unlawful act.

Where a great number shall assemble themselves, or come into a house, and there detain Possession of the house with force (though this is neither a publick Fact; or Force, done in the open sight of the People; yet) this is a Riot, and the Justices of Peace punishable, if they shall not remove such Force, and suppress such Riots: See the Case of *Drayton Bassett* before, *tit. Forceable Entry*.

Concerning the lawfulness or unlawfulness of the Act. CHAP. CXXXVII.  
*Vide* 86.

**N**ote, That the lawfulness or unlawfulness of the thing done or intended, doth not always excuse or accuse the parties to a Riot, &c. but so, that the manner and circumstances of the Act, must also be considered. *Lawfulness of the Act.*

For every Man may assemble company to aid him in his house, against injury or violence: But if a Man be threatned, that if he come to such a place he shall be beaten. In this case, if he shall assemble any company to go thither with him (though it be to safeguard his person) it seemeth to be within the compass of these Statutes, and unlawful. *Br. Riots* 1.

Every Man in peaceable manner may assemble a meet company (and may come) to do any lawful thing; or to remove, or cast down any common Nuisance done to them.

Co. 5. 101.  
29. 55.

Every private Man, to whose House or Land any Nuisance shall be erected, made, or done, may in peaceable manner assemble a meet company, with necessary Tools, and may remove, pull, or cast down such Nuisance, (and that before any prejudice received thereby) and for that purpose, if need be, may also enter into the other Mans Ground. *Br. Nuisance*, 14. & 33.

36 Eliz.  
Crompt. 66

A Man erects a Wear, cross a Common River (where People have a common passage with their Boats) and divers did assemble with Spades, Crows

Crows of Iron, and other things necessary for to remove the said Wear, and made a Trench in his Land, that did erect the Wear, to turn the Water, so as they might the better take up the said Wear, and they did remove the same Nuisance. This was holden neither any Forceable Entry, nor yet any Riot.

But in the Cases aforesaid, if in removing any such Nuisance, &c. the persons so assembled, shall use any threatening words (as to say, they will do it in spite of the other; or they will do it, though they die for it, or such like words) or shall use any other behavior, in apparent disturbance of the Peace, then it seemeth to be a Riot; and therefore where there is cause to remove any such Nuisance (or to do any like act) it is the safest not to assemble any multitude of People, but only to send one or two persons, or (if a greater number) yet no more than are needful; and only with meet Tools, to remove, pull, or cast down the same, and that such persons tend their business only without disturbance of the Peace, or threatening Speeches.

For the manner of doing a lawful thing, may make it unlawful.

Also the manner of doing an unlawful act, by an Assembly of People, may be such (and so handled) as that it shall not be punished as a Riot.

As if I shall assemble a meet company to carry away a piece of Timber, or other thing (whereto I pretend a Right) that cannot be carried without a great number, if the number be not more than are needful for such purpose, although another Man hath better right to the thing so carried away; and that this act be a wrong, and unlawful: Yet is it of it self no Riot, except there be withal threatening words used, or other disturbance of Peace.

For the Manner and Circumstances. CHAP. CXXXVIII. v. 87.

**A**S there must necessarily be three persons at the least assembled together to make a Riot, &c. so their being together, and their demeanor must be such, as shall or may breed some apparent disturbance of the Peace; either by threatening Speeches, turbulent Gesture, shew of Armor, or Actual Force or Violence (to the terror and fearing of the peaceable sort of People, or to the imboldning and stirring up of such as are busie-headed, and of evil disposition by such fact;) or else it can be no Riot, &c. For, as I said before, the manner of doing a lawful thing, may make it unlawful, & *converso*.

And therefore, if divers in one company, going to the Church, Fair, or Market, shall go armed; or one going to the Sessions, or other like Assembly, shall go with his Servants in Harness (to the terror of the people) though he or they have no intent to fight, or to commit any Riot; yet this is a Riot by the manner of his or their going, being needless, disordered, and against the Law. See 2 Edw. 3. c. 3.

But in the former Cases, if they had gone in privy Coats of Plate, Shirts of Mail, or the like, to the intent to defend themselves from some adversary. This seemeth not punishable within these Statutes, for that there is nothing openly done in terror of the people.

One N. W. together with fourscore persons, came with Spades, Mattocks, Pistols, Swords, and Daggers, in the night, to a piece of Ground (where Sir Tho. St. had made a great Wear cross over the River of Trent, in the County of Nottingham, to the great Nuisance of Passengers there, &c.) and there they made one or two little Trenches to let out the water,

Water, &c. And though it were lawful to make the trenches, and to debruse the Nufance, yet for that they came with such number, and weapons, they were deeply fined in the Star-Chamber, 36 *Eliz.*

Also one *Kemp*, Lord of a Copyhold, did enter with twenty persons, and cut his Copyholders Corn with force, for that his Copyholder would not compound with him for his fine; and although the entry of the Lord was holden lawful, yet punishable as a Ryot in regard of his number and force.

In all cases where three (or more) shall enter into Lands, &c. with force (upon the possession of another) where their entry is lawful, yet it is a Ryot, by reason of number and force; for the Stat. of 5 R. 2. prohibiteth the entry with force, or with multitude of people, although the entry be (otherwise) lawful.

*What persons may commit a Ryot, &c.* CHAP. CXXXXIX. V. 88.

**I**F a number of Women (or Children under the age of discretion) do flock together for their own cause, this is no assembly punishable by these Statutes, unless a man of discretion moved them to assemble for the doing of some unlawful act, as *M. Marrow* held.

Yet certain Women, that had apparelled themselves in mens apparel, and had pulled down ryotously a lawful inclosure, were worthily punished for the same in the Star-Chamber, as *M. Lamb.* reporteth.

Also Women and Children may commit a force, may commit larceny, and may be bound to the Peace, as breakers of the Peace. See before, *tit. Surety for the Peace, and Forceable Entry, and Doct. and Stud.* 147, 148.

Concerning Children, and their punishments in such cases, See *hic.*

Also Women covert are holden to be within the Stat. of *Mert. cap. 6.* for Ravishment of Wards; and within the Stat. of *Westmin. 1. cap. 20. de Malefactoribus in parvis*: and within the Stat. of 8 H. 6. of Forceable Entry: and within the Statutes of 1 *El. cap. 2.* and 23 *El.* for recusancy, although they be not named within any of these Statutes.

Also if a Woman covert shall commit any Ryot, or do any trespass or other wrong, she is punishable for it; and for a trespass done by the Wife, or for a scandal published by her, the action lieth against both the Husband and Wife, *sc.* an action of trespass, or of the case, shall be brought against the Husband and Wife, and there the Husband is chargeable to the damages, or fine, because he is a party to the action and judgment, (See *panlo antea, tit. Forceable Entry.*) but if a Woman covert without her Husband be indicted of a Trespass, Ryot, or any other wrong, there the Wife shall answer, and be party to the judgment only; and in such case the fine set upon the Wife shall not be levied upon the Husband; yet after the Husbonds death it seemeth such damages or fine shall then be levied of the Wife her self; And as for imprisonment, or other corporal pain, it shall be inflicted upon the Wife only, and not upon the Husband for his Wives act or default.

And note, that any Subject of this Realm, for any injury done to his person, or done to him in his lands, or goods, may pursue, and have the Justice of the Law, against any other Subject, be he bound or free, be it a Woman or an infant, be they Religious persons, or be they persons excommunicate, or outlawed, or other person whatsoever, without any exception, &c. for the King (by the Statute of *Magna Charta, ca. 29.*) saith, *Nulli vendemus, nulli negabimus, aut differemus justitiam, vel remedium.* *Dyer* 104.

F f

But



But if a Mayor and Alderman, or Bailiff and Burgesſes, or the Fellows <sup>Lamb. 183</sup> of any other Society, do aſſemble in their common quarrel, and make a Ryot, or Rout, this ſhall be puniſhed in their own private natural perſons, and not in the body politick. *Br. impr. 95.*

High Treason. CHAP. CXL. V. 89.

§. 1.  
*Deſined.*

**H**igh Treason (called in Law, *Crimen leſe Majeſtatis*) was always <sup>Glanvil.</sup> eſteemed a grievous offence, done or attempted againſt the eſtate Regal, viz. againſt the King the head, life, and ruler of the common-wealth) in his perſon, the Queen his Wife, his Children, Realm, or Authority; as.

To compaſs the death of King, the Queen his Wife, or of their eldeſt Son and Heir. <sup>25 E. 3. cap. 2. Fi. 22.</sup>

§. 2.  
*About life.*

To compaſs the death of the Father or Mother of the King or of any of the Kings Children, although that ſuch compaſſing be not brought to effect, yet it is Treason, by *Britton* in his title of *Appeals*, fol. 39. *Stamf.* fol. 1. p. *Quere*, for it was Treason before the Statute, but not ſince, as *Stamf.* fol. 1. p. holds.

To compaſs the death of an uſurper of the Crown is Treason, for which the offender may be arraigned in the time of another King, as appeareth, *Br. Treas.* 10. <sup>Saml. lib. Co. 8. 28. Br. 149.</sup>

To intend or imagine the death of the King, or Queen, though they bring it not to effect, *ſc.* if they ſhall declare this by an open act, whereby it may be known, or to utter it by words or letters, is Treason.

To intend to deprive, depoſe, or diſinherit the King, is High Treason, if it may appear by any open act; for no Crown can be taken from a Kings head, without loſs of his head and Crown both, ſooner or later, as His Majeſty hath obſerved in his *juſt Defence of the right of Kings*. See *Brit.* and *Stamf.* 1. p.

‘And here the intent of the heart is enough, *ſc.* if one ſhall intend, ‘imagine, will, or ſeek any ſuch thing, whether the deed follow, ‘or not, if it may be diſcovered, it is high Treason in the Kings caſe.

So to ſay, That he will be King after the Kings death, is high Treason. See the Duke of *Buckingham*s caſe. 13 H. 8. fol. 12.

M. *Glanvill* alſo, and M. *Bratton*, ſay thus, or to this effect: *ſi quis machinatus fuerit, vel aliquid fecerit in mortem Domini Regis, vel ad ſeditionem Regis, vele exercitus ſui, vel conſenſerit, conſiliumve dederit, vel auxilium procuraverit, ſeu preſtiterit, licet id quod in voluntate habuit, non produxerit ad effectum, tenetur tamen criminis leſe Majeſtatis reus*. See *Glanv.* lib. 14 fo. 110. & *Bratton* lib. 3. fol. 118. *Stamf.* 1. v. x.

‘One *Williams* expelled the middle Temple for Religion, wrote two ‘Books, the one he called *Balaams Aſs*; alſo the other *Speculum Regale*, ‘wherein he took on him the office of a Prophet, and ſaid the King ſhould ‘dye *Anno Dom.* 1621. grounding himſelf upon the Prophecy of *Daniel* ‘of time and times, and half a time; and that now was the time of *Anti- ‘chriſt*; for ſin was at the higheſt, and that this Land was the abomination ‘of deſolation, and the habitation of Devils, &c. The Court held this to ‘be high Treason, and that by the Common Law; for theſe words im- ‘port the end and deſtruction of the King and his Kingdom, and that Anti- ‘chriſtianism and falſe Religion is maintained; which is a motive to peo- ‘ple to commit Treason and Rebellions. It was alſo reſolved, that al- ‘though he pretended he did it for the Kings Information, and as a Caveat ‘and

“and Admonition, for that, when he had declared the Judgment, he after  
 “added (*which God avert*) yet his good intention shall not be respected;  
 “when his words and actions appear to the contrary; and when a man  
 “hath spoken Treason in the premisses, he shall not qualifie it, *with a God*  
 “*save the King*. Secondly, it was resolved, that although it seems to be  
 “his opinion and thought only; yet *in atrocioribus delictis punitur affectus*  
 “*licet non sequatur effectus*; and in this case *scribere est agere*. Thirdly, It  
 “was resolved, That although his Books were inclosed in a black Box, and  
 “sent privately to the King; yet it was Treason *Car son intent apperit per*  
 “*son act*. And *Telverton* the Kings Attorney said, at Common Law, there  
 “were 4 manner of Treasons, 1 Rebellion. 2 To deny the Kingstitle and  
 “power Temporal or Spiritual. 3. To maintain or advance Superior  
 “power to the King. 4. To bear the people in hand, that the Kings Go-  
 “vernment is Erroneous, Heretical, Unjust. *Williams case*, P. 17 Jac.  
 “*Rolls Rep. part 2. p. 88.*

And so note, That Treason may be committed by imagination, and a  
 resolution to perform or do an act, although it be not brought to effect, as  
 in these former cases. This was the case of *Bigtham* and *Tereish*, who were  
 both hanged, only for that they had a will to kill King *Abasuerosh*, and  
 sought to lay hands on him, *Ester* 2. 21, 22.

Co. 4. 124.

If one that is a mad-man do kill, or attempt to kill the King, it is in him  
 High Treason; whereas Petty Treason, Homicide, or Larceny, shall not  
 be imputed to such a person, *Vide Stat. 33 H. 8. cap. 20.* But *Coke* 3 *Inst.* 6.  
 is otherwise, *Ideo quare.*

Dyer 128.  
Abr.

One Constable pointed to another, saying to his friends, *Behold King*  
*Edward*, (who was then dead) and for those words he had Judgment and  
 Execution as a Traytor, *Dyer* 128. but *Ca. 7. 10.* observeth, That the words  
 were accompanied with other Circumstances, which appear not in our  
 usual printed Books.

“Treason may be committed by words, as to say, The King being Excom-  
 “municated by the Pope, may be lawfully deposed and killed by any per-  
 “son whatsoever; which killing is no Murder. P. 13 Jac. *Owens case.*

‘To intend the Bodily hurt of the King, or to affirm that the King is  
 ‘not King, or is an Heretick, Tyrant, or Usurper, &c. *Vide Stat. 13 Eliz.*  
 ‘*cap. 1.* To arrest or imprison the King is Treason, for that is the way to  
 ‘kill him. *Rolls Rep. 2 part. p. 89.*

P. 1.

Also to deflower the Kings Wife, his eldest Daughter being unmarried,  
 or his eldest Son and Heirs Wife, is high Treason, 25 E. 3. 2.

P. 1.

So it is if any man shall deflower any other of the Kings Daughters,  
 yea or the Nurses of any of the Kings Children, as Mr. *Britton* writeth,  
*fol. 43. Stamf. fol. 1. b.*

To levy War against the King, &c. in this Realm, is High Treason: §. 4.  
 Note, That to detain or hold a Castle, or Fortrefs, against the King, is to  
 levy War against the King. See *Br. Treason*, 24. 25 E. 3. cap. 2.

So to conspire to levy War against the King, &c. is High Treason.

Dyer 92.

Also to detain, keep, or with-hold from, or against the King, any of his  
 Ships, or Ordinance, or maliciously to burn, or destroy any of the Kings  
 Ships; or maliciously to bar any Haven within any of the Kings Domi-  
 nions; all and every of these seem to be included within these words, [ *To*  
*levy War against the King* ] and so be high Treason. See *Br. Treason* 24. &  
*Stat. 14 Eli. cap. 1. & quare.*

Dyer 298.

To sell any Armour to the Enemy, or to furnish the Enemy with Wea-  
 pon or Munition, have been accounted crimes reasonable. *W. Segar Norroy*,  
*of Honour Military and Civil. pag. 14.*

If any person having a charge, shall yield the same unto the Enemy, this also is a crime treasonable, *ibid.*

So all explorators or spies, that bewary our secrets, and inform the Enemy thereof, are to be accounted Traytors. *ibid.*

To practise with a Governour of another Countrey to invade this Realm, is High Treason; although such practice be not put in ure, *Dyer* 298.

So to kill one that is sent in the Kings message, *Aff. Stamf. 1. 1. Br.*

To incounter in fight and kill such as are assisting to the King in his Wars, or such as come to help the King, is High Treason. *45 Ed. 3. 25. Stamf. 1. 1.*

*Br. Treas. 7.*

These two last cases were holden to be High Treason, before the Stat. of 25 Ed. 3.

To succour the Kings Enemies is Treason. *Throp. 22 Ed. 3. fol. 429.*

To be adherent to the Kings Enemies (aiding them, or giving them aid or comfort, in his Realm, or elsewhere) is High Treason. See *Br. Treason P. 11*

*1. & 13. Fitz. Trial. 54. 25 E. 3. cap. 2.*

So to be of Council with another in levying seditious War.

If a Subject shall go beyond the Sea, and there shall adhere, or joyn himself with the Kings Enemies, and there (in such enmity) shall dye, or be slain, this seemeth to be Treason, and to be an attainer in Law, without any more, &c. by the ancient Common Law of this Land: as appeareth, *8 E. 3. Fitz. Dower 106.*

So if a Subject shall joyn in Battel within the Realm to the Kings Enemies, and shall be slain in the field; by the ancient Common Law of this Realm he shall forfeit his Lands, Goods and Chattels, and his blood shall be corrupted, without any other Judgment, for that he himself is the cause that he cannot come to the Tryal of Law in his life time. *Pl. 262. a. & 263. a. Vide stat. 34 E. 3. cap. 12.*

But if an Alien Enemy come to invade this Realm, and be taken in War, he cannot be indicted of Treason, but he shall be put to death by martial Law, *Co. 7. 6. b.* Otherwise it is of an Alien whose K. is in league or at peace with our King, or who is in this Realm in the time of Peace, and hath the benefit of the Kings Peace, he shall be indicted or arraigned of Treason, and shall have judgment accordingly. An English Traytor pleading that he is Subject to a foreign Prince, shall notwithstanding (upon a *Nihil dicit* Recorded) have judgment as a Traytor, *Dyer 300.*

If any person shall joyn the Arms of England with his own Arms, it seemeth to be High Treason. See *38 H. 8. Br. Treason 2.*

If any person shall counterfeit the Kings Arms, or the Arms of this Realm, it is High Treason, as *M. Kitchin* hath it, *fol. 12.*

To counterfeit the Kings great Seal, Sign Manual, Privy Signet, or Privy Seal, is High Treason. *23 Ed. 3 cap. 2. & 1. Mar. 6.* But before the Statute *25 E. 3.* these were petty Treason by the Common Law. *Fi.*

So to take an old Seal from another Patent, &c. and put it to a new Patent, &c. yet *quare* whether this be Treason, or but misprision. *M. Stamf. fol. 3. c.* saith, that it was adjudged to be Treason in his time. *Vide Ibidem.* And so said Sir *H. Telverton. Rolls part. 2 p. 51.*

“One counterfeited the Crown in the Signet, and left out divers words of the Kings Stile, and added some others that were not in the Stile of purpose that there might be a variance between them; yet it was adjudged that this was a counterfeiting by putting this false Seal to the Paper, and thereby getting the Great Seal to a Patent. *Robinsons case. M. 16 Jac. Rolls. Rep. part. 2. p. 50.*

Also



Also it is Treason in such, as without Authority shall set the Kings Seal upon any Writing, *speculum Just.* See *Bracton*, lib. 3. fol. 119. b.

Quere, of such as shall fraudulently thrust a writing (among others) to the Seal, and so get it Sealed.

To counterfeit the Kings money (sc. the coin of this Realm, or such as by the Kings Authority is coined within this Realm, or within the Domini-<sup>s. 6.</sup> mons thereof) is High Treason. *Stamf.* 3. c. 25. *H. 3. cap. 2.* <sup>Money.</sup>

And the Justices of Peace may enquire thereof, and thereupon may make out Process, by *Capias* only, against those which before them shall be hereof indicted. *3 H. 5. cap. 7.*

So to counterfeit any other coyn of any other Realm, which (by the Kings Proclamation, or by act of Parliament, or permission) is made current within this Realm, is High Treason. *1 Mar. Par. 1. cap. 6. Co. L.*

208. So to forge or counterfeit such coyn, though he uttereth it not. *Stamf.* 3. d.

And these counterfeitings are, where any Common person shall coyn any such money without the Kings Warrant.

To forge or counterfeit any coyn which is not current in this Realm, is misprision of Treason,

To clip, wash, round, file, impair, diminish, lighten, or falsifie any coyn or money of this Realm, or any other Realm, allowed or suffered to be current within this Realm, is Treason. *Bracton*, 119.

To bring from beyond the Sea, into this Realm, any false or counterfeit coyn or money made in any other Realm, like to the coyn of this Realm (or like the coyn of any other Realm, being currant within this Realm) knowing it to be false, to the intent to merchandise therewith or to make payment thereof, in deceit of the King and his people, is high Treason: but to bring such money into England, out of Ireland is but misprision, though he knoweth it, and uttereth it, *Quia Hibernia est quasi membrum Anglie.*

If he which by the Kings warrant doth coyn money (either in England, Ireland, or elsewhere) making it much less in weight than the ancient ordinance; or coyneth false metal, it is Treason. *Br. Treason.* 19.

So to coyn any money, not having authority or warrant to do it, is high Treason. *speculum Justic.*

To coyn farthing-tokens is no Treason, but is punishable: And so Sir Francis Harvey delivered it in his charge at Cambridge Summer Assises *An. 1631.*

To utter false money made within this Realm, or other the Kings Domini-<sup>1 H. 7. 10</sup> mons, knowing thereof, is misprision of Treason. <sup>Br. 19.</sup>

The Book called the *Mirror of Justices*, (or *Speculum Justiciariorum*, written by Mr. Andrew Horne) divides these former Treasons into two sorts, sc. *Le Crime de Majestie*, & *Le Crime de Fausonnerrie*. See also *Br. fol. 118.*

Such as shall kill the King, or shall compass to do it.

*Le Crime de Majestie.* 3. x.

Such as shall do or procure any thing, *ad seditionem Domini Regis, vel exercitus sui.*

Such as shall deflower the Kings Wife, his Daughter, or the Wife of the Kings Heir.

*Le Crime de Fausonnerrie* is in two manners, sc. by

Falsifying the Kings Seal,  
Falsifying his Money.

§. 7. Also to kill the Kings Chancellor, Treasurer, Justices of either Bench, Justices in Eyre, Justices of Assize, or Justices of Oyer and Terminer, being in his or their place doing his or their Office, is High Treason.

But because many other like cases of Treason might happen, &c. it was (by the Stat. 25 E. 3. cap. 2.) accorded, That if any other case supposed Treason, which is not in that Statute specified, doth happen before any Justices, the Justices are not to proceed thereupon, until the cause be declared before the King and his Parliament, &c.

Also by the Stat. of 1 Mar. Parl. 1. & sess. 1. it is ordained, That no act, deed, or offence, made Treason, Petty Treason, or Misprision of Treason, by any Act of Parliament, or Statute, shall be taken, deemed, or adjudged to be High Treason, Petty Treason, or Misprision of Treason, but only such as be declared to be Treason, Petty Treason, or Misprision of Treason, in or by the Statute made 25 E. &c. any Statute made before or after the said Statute of 25 E. 3. or any other declaration or matter to the contrary notwithstanding.

§. 8. *Accessory.* Note, That the Counsellors, Procurers, Consenters, Abettors, and Aiders to any of the forenamed Treasons, be all within the compass and danger of High Treason; for in Treason all the Offenders be Principals.

To conceal or keep secret any High Treason, is Misprision of Treason, 1 E. 6. c. 12. 5 & 6 Ed. 6. c. 11. & 1 E. 6. cap. 6. §c. when a man shall conceal it, and not discover it to the King, or to some of the Kings Council, or to some other Magistrate. What the ancient, &c. See *hic postea*, out of Br. lib. 3. & scribe *hic*.

Also all receivers and accessaries (to High Treason) after the Offence, seem to be in case of Misprision, yet by some they be all Principals, *vide postea*, tit. *Accessorie*, cap. 18.

To set at large unlawfully, any person that is committed to Prison, ward, or custody for Treason, is Treason by the Common Law. See 1 H. 6. fol. 5. Br. Treason, 11.

"If a man that is *non compos mentis*, do any Act that done by a man of sound mind were Treason; it is Treason in him also. *Rolls part. 2. p. 324.*

§. 9. *Prison.* If one that is in Prison for Felony shall break the Prison, whereby a Traytor being in the same Prison shall escape, this is Treason (in him that broke the Prison) by the Common Law. *vide* 1 H. 6. 5.

So voluntarily to suffer any person to escape, that is committed to Prison, or but under arrest for Treason; this is Treason by the Common Law, *Stamf. 32. 1.*

If two or more do conspire to commit High Treason, and some or any one of them after do commit and execute it; this is High Treason in them all by the Common Law.

Note also, that the aforefaid Statute of 25 E. 3. cap. 2. is but a declaration and explanation of the Common Law, before, for all the said Treasons in the said Statute mentioned, were Treason by the ancient Common Law of this Realm, before the making of the said Statute.

§. 11. *Treason by Statute.* Since which time of King Edw. 3. divers other Offences were made Treason, as appeareth by the Statutes, 22 Rich. 2. 2 H. 5. 6. 3 Hen. 5. 6. 8 H. 6. 4 H. 7. 18. 22 H. 8. 9. 26 H. 8. 13. 27 H. 8. 2. 28 H. 8. 10. & 18. 31 H. 8. 8. 32 H. 8. 25. 33 H. 8. 21. 35 Hen. 8. 1. and first Ed. 6. 12. all which were repealed again by the said Statute made 1 M. Parliament 1. or before, as is aforefaid.

Also

Also since the aforesaid Statute of Repeal, there have been divers other offences made or declared to be Treason, whereof some were but as an addition to, or an explication of the Treasons before specified, and mentioned in the said Statute of 25 E. 3. c. 2. viz. the Statutes 1 M. 6. 1. & 2 P. & 26 H. 1. c. 5. 18 E. 1. c. 1. & 14 Elix. 3. by which five several Statutes last mentioned the counterfeiting of the Kings Seal, or abusing his Coyn, and bringing in of false Coyn, &c. are in some particulars more fully prohibited than before, as may herein before appear.

There are also divers other Offences made High Treason (by other Stat. made since the beginning of the Reign of Queen El.) and those specially made for the preservation of the said Queen, her Heirs and Successors, and of the dignity of the Imperial Crown of this Realm; and for the avoiding of the dishonors, inconveniences, and dangers growing to the whole State, by means of the jurisdiction of the See at Rome, heretofore usurped within this Realm, &c. as hereunder appeareth.

First, the maintaining or extolling the authority of the Bishop or See of Rome, within any the Kings Dominions; and the Procurers, Counsellors, Aiders, and Maintainers thereof, and every of them.

§. II.  
The Bishop  
of Rome

For the first offence they shall incur the danger of a *Premunire*; the second Offence is High Treason. But no person shall be tendered the Oath the second time; but such as have an Office or Ministry, in the Church under a Bishop or Archbishop, or persons refusing to observe the Offices of Divine Service after admonition, or depraving the Rites and Ceremonies of the Church, or that shall hear or say Mass.

Also the Bringers over of any Books, that shall maintain, set forth, or defend any such authority; and the readers and hearers of such Books, that shall justify them;

And such as shall deliver any such Books to others, with allowance and liking of the same.

And the Printers and Utterers of such Books within this Realm; all and every such Offenders are (by the Judges) resolved and construed to be within the meaning of the same Stat. of 5 El. ca. 1. and their first offence to be a *Premunire*, the second is High Treason.

Again, the refusal of the Oath for the Kings Supremacy (in all Cases, and over all Persons, &c.) after lawful tender thereof made; the first refusal is a *Premunire*, the second is High Treason.

The Justices of Peace, &c. may in their Quarter Sessions inquire of all things done against 5 El. 1. as of Offences against the Peace, and may certify such presentment into the Kings Bench within forty days after such presentment made, if the Term be open; or if not open, the first day of the next Term, or shall forfeit 100 l. and the Justices of the Kings Bench may hear and determine the Offence, as if the person Offending had been presented upon any matter in the Statute of 16 R. 2.

The second refusal of the Oath of Allegiance, being tendered according to the Statute, is a *Premunire*, &c. 7 Jac. 1. c. 6.

Where the first tender is before two Justices and a refusal thereupon, the refusal in Sessions after incurs a *Premunire*, but it seems by 3 Jac. 4. a refusal in Sessions without any precedent tender makes a *Premunire*.

Again, to obtain or get from Rome, or from any claiming authority from thence, any Bull or Writing, (the effect whereof is, to absolve and reconcile all those that will forsake their due obedience to the King, and yield themselves to the B. of Rome,) or to give or take absolution, by colour of any such Bull; or to grant or promise any such absolution or reconciliation; or to use, publish, or put in use any such Bull; every such act shall be High

Bulls



High Treason, as well in the Offenders, as in the Procurors, Abettors, and Counsellors to the Fact.

"If any persons shall obtain or get from the Bishop of Rome, or any his Successors or See of Rome, any manner of Bull, Instrument or Writing Written or Printed, containing any matter or thing whatsoever; or shall publish or put in ure any such Bull, Instrument or Writing; the Offender shall be adjudged guilty of High Treason, and forfeit accordingly.

And all Aiders, Comforters, and Maintainers of any such Offender, after the Fact, shall incur a *Premunire*.

To conceal such Bull (or Writing) or such absolution offered them, and not within six weeks to disclose it to some of the Kings Privy-Council, is misprision of Treason.

§. 12.  
*Premunire.*

To purchase or pursue (in the Court of Rome, or elsewhere) any Excommunication, Bull, or other Instrument, against the King, his Crown, or Realm; or to bring them within this Realm; or to receive them, or to make notification, or any other execution thereof, within this Realm, or without, every such Offender, their Procurors, Maintainers, Abettors, and Counsellors, shall incur the danger of a *Premunire*, 16 R. 2. cap. 5.

To practise (beyond the Seas, or upon the Seas, or elsewhere within the Kings Dominions) to absolve, perswade, or withdraw any Subject, or any within any his Highness Dominions, from their Obedience to His Majesty; or to reconcile them to the Pope, or to draw them to the Romish Religion (by argument, Books, or otherwise) for that intent; or to move them to promise Obedience to the See of Rome, or to any other Prince, State or Potentate; every such Person, and their Procurors, Aiders, Counsellors, and Maintainers, knowing the same are all in case of High Treason.

To be willing absolved, perswaded, withdrawn, or reconciled, as aforesaid, or to promise any such Obedience, every such person, and their Procurors, Counsellors, Aiders, and Maintainers (knowing the same) shall be adjudged Traytors, except they submit themselves, according to the Statute, within six days after their return into this Realm, &c. *Vide antea, tit. Recusants.* "Except in cases of Treason and Misprision.

To conceal any such Offence, and not within 20 days to disclose it to some Justice of Peace, or other higher Officer, is misprision of Treason by the Stat. 23 El. 1. P. Rome 8.

§. 13.  
*Juits.*

Again, for any Jesuit, Priest, or other Ecclesiastical person (born within any the Kings Dominions) and made by any Authority from the Bishop of Rome, to come into, be, or remain, in any of the Kings Dominions, contrary to this Statute, is High Treason.

To receive, relieve, aid, or maintain any such Jesuit, &c. (being at liberty, and knowing him to be a Jesuit, &c.) is Felony, without benefit of Clergy, 27 El. cap. 2. "But that clause relates to such as had before that time taken Orders. See the Statute.

To conceal such a Jesuit, &c. so not to discover them to some Justice of Peace, or other higher Officer, within twelve days, is punishable by Fine and Imprisonment.

And the Justice of Peace, or other such Officer, to whom such a person shall be discovered, if within 28 days they give not information thereof to some of the Kings Council, &c. they shall forfeit 200 marks. See *plus, tit. Recusants.*

*Bulls.*

The Popes Bulls, in Latine called *Bulle*, are so called, *Quod Bullis plumbeis obsignentur*; and in which *consilium & voluntas Papae continentur*.

What the ancient Law was for concealing of High Treason, *Bract. lib. 3. fol. 418.* Sheweth us, saying, *Si sit aliquis, qui alium noverit inde esse culpabi-*

*'pabilem, &c. statim & sine intervallo aliquo accedere debet ad ipsum Regem, si possit, vel mittere (si venire non possit) ad aliquem Regi familiarem, & omnia ei manifestare per ordinem: And he must not stay in any one place by the space of two nights or days: And if he be negligent therein, he shall be taken as consenting. See more, misprision, cap. seq.*

27 El. 2.  
P. Jesuits 4 If any of the Kings Subjects (not being a Jesuit or Ecclesiastical person) which are or shall be brought up in any Seminary or Colledge of Jesuits, or Seminary beyond the Sea, shall not (within six moneths after Proclamation in that behalf to be made in London, &c.) return into this Realm, and within two days after such return (before the Bishop of the Diocess, or two Justices of Peace of the County where he shall arrive) submit himself to the Kings Laws, and take the Oath of Supremacy, (set forth 1 El. 1.) then every such Person which shall otherways return, or come into this Realm, or any other His Majesties Dominions, without such submission, shall be adjudged a Traytor.

For (as one saith) it may justly be feared, not only of all Jesuits and Seminary Priests, but also of all such other (Jesuited) persons whatsoever, that shall come into His Majesties Dominions, or return into this Realm, contrary to this Statute, That it is not Faith, but Faction; nor Truth, but Treason; not Religion, but Rebellion, which is the cause of their coming.

27 El. 2.  
P. Jesuits 5 To convey, deliver, or send, yield, or give any relief, to or for any Jesuit, or Priest, &c. or other person abiding in any Seminary beyond the Seas, &c. is a *Præmunire*.

18 El. 2.  
P. Rom. 5 To bring into this Realm any *Agnus Dei*, Crosses, Pictures, Beads, or such like superstitious things, consecrated by authority from the Pope, and to deliver them, or to offer or cause them to be delivered, to any Subject of this Realm, is a *Præmunire*, as well in such person, as also in them that shall receive any such thing, to the intent to use or wear it.

13 El. 2.  
P. Rom. 6 The person to whom such *Agnus Dei*, &c. shall be offered, must apprehend the Partry offering the same, and bring him to the next Justice of Peace he can; or else must within three days disclose his name and place of abode, to the Ordinary, or some Justice of Peace in that County: and if he received any thing, he must deliver the same within one day to a Justice of Peace of that County, where the Party so receiving the same, shall then be resident, or happen to be; and so doing shall be pardoned. And that the Justice of Peace within 14 days must disclose the same to one of the Kings Majesties Privy-Council, upon danger of a *Præmunire*.

'The former Offences against the Stat. 5 Eliz. 1. & 13 Eliz. 2. & 23 Eliz. 1. may also be enquired of by the Justices of Peace in the Sessions. Vide Eliz. cap. 1. & hic cap. 20.

13 Car. 2.  
24. 1. 'To compass, imagine, devise, or intend death or destruction, or any bodily harm, tending to death or destruction, maiming or wounding, imprisonment, or restraint of the person of the King during his life, or to depose him from the Stile, Honour, or Kingly Name of this Realm, or any of his Dominions or Countries; or levy War against him within this Realm or without: Or stir any Forreigner with force to invade this Realm, or any other his Dominions or Countries under his Obedysance: And such compassings, imaginations, intentions, or any of them, shall express, utter, or declare by any Printing, Writing, Preaching, or malicious and advised Speeches being convicted thereof upon the Oaths of two credible Witnesses, or attainted by course of Law, is Treason; and forfeiture, as in High Treason incurred hereby.

'If

‘ If any person ( during the Kings life ) shall maliciously and advisedly  
 ‘ publish or affirm the King to be an Heretick, or a Papist, or that he in-  
 ‘ deavours to introduce Popery ; or shall maliciously and advisedly by  
 ‘ Writing, Printing, Preaching, or other Speeches, express, publish, or de-  
 ‘ clare any words, or other thing or things, to stir up the people to hatred,  
 ‘ or dislike of the person of His Majesty, or his established Government ;  
 ‘ such persons ( upon Conviction ) are disabled to have any Office, or pro-  
 ‘ motion Ecclesiastical, Civil, or Military, and liable to such other punish-  
 ‘ ments as by the Law may be inflicted.

‘ If any person or persons shall maliciously and advisedly by Writing,  
 ‘ Printing, Preaching, or Speaking, publish, declare, or affirm, That the  
 ‘ Parliament begun at *Westm. 3. Novemb. 1640.* is not dissolved, or not  
 ‘ determined, or that it ought to be in being, or that there lies any Obli-  
 ‘ gation upon him, or any other person, from any Oath, Covenant, or En-  
 ‘ gagement, to endeavour a Change of Government ; or that both, or  
 ‘ either Houses of Parliament have a Legislative Power without the King,  
 ‘ or any words to the same effect: such Persons shall incur the penalty of  
 ‘ a *Præmunire* mentioned in the Stat. of 16 R. 2.

*Persecution*

‘ None shall be prosecuted for these Offences ( except for the Treason ) <sup>13 Ca. 4</sup>  
 ‘ unless by the Kings Order under his Sign Manual, or by Order of the <sup>C. 1.</sup>  
 ‘ Council Table directed to the Attorney General, or other learned Coun-  
 ‘ cil. Nor shall any incur the penalties, unless prosecuted within 6 moneths  
 ‘ after the offence, and indicted within 3 moneths after that prosecution.

*Trial.*

‘ None shall be Indicted, Arraigned or Attainted of the Treasons or <sup>13 Ca. 4</sup>  
 ‘ Offences, unless accused by two Witnesses upon Oath ; who at his Ar- <sup>C. 1.</sup>  
 ‘ raignment shall be brought face to face, to avow what they have to say  
 ‘ against him ; unless he willingly confess.

### Misprison. CHAP. CXLI. P. 90.

‘ **M**isprison signifieth in our Law, neglect, negligence, or oversight, in  
 ‘ not revealing a Treason, or Felony, when we know it to be com-  
 ‘ mitted, or about to be committed ; so making a light account of such  
 ‘ Capital Offences: See *infra*. And see High Treason, the Stat. 13 Car. 2. cap. 1.

There be certain Offences, which by the Common Law are Misprison  
 of Treason, or at least punishable in the same degree, or in an higher de-  
 gree. As

To draw a Sword to strike a Justice sitting in the place of Judgment, is  
 Misprison of Treason. So

To strike a Juror in the presence of the Justices, sitting in place of Judg-  
 ment, *Br. Contempt 19. Fitz. Judg. 174. Fi.*

So to strike another in *Westminster Hall*, sitting on any of the Kings  
 Courts there, *Dyer 188. Fitz. Cor. 285. Fi.*

So it seemeth to draw any weapons ( therewithal to strike any person )  
 in the presence of the Justices, or to make an affray in their presence, *Br.*  
*Pain 16. Stamf. 38.*

So to rescue any such Offender. *Ibid.*

So to strike any person in the Kings Court ( Palace, or other House ) the  
 King being then in his Court. And Judgment was given accordingly in  
 such case upon a Knight, *Ann. 33. Hen. 8.* for striking another at *Greenwich*,  
 the King being there, *Br. Ibid.* Yet now see the Stat. of 33 H. 8. 12. That  
 such an Offender in the Kings Palace ( although he shall draw blood by  
 striking there ) he shall forfeit neither the Profits of his Lands, nor his  
 Goods,

<sup>21 E. 3. 19.</sup>  
<sup>Stamf. 38.</sup>

<sup>b. P. R.</sup>

<sup>117.</sup>

<sup>Ibid.</sup>

<sup>Stamf. 38.</sup>

<sup>C.</sup>

<sup>13 C.</sup>  
<sup>C. 24</sup>



Goods, but shall lose his right hand, be imprisoned during his life, and shall pay fine and ransom at the Kings pleasure: and so now such an offence done in the Kings Palace, shall not have so grievous a punishment, as if it be done in *West. Hall*. See *Stamf.* 38. d.

*Ibid.* But in the former cases, the Offender shall have Judgment as in Misprision of Treason, and besides shall have his right hand cut off. *Br. Peine* 16. *Fitz. Forf.* 21. *Dyer* 188.

*Ibid.* If one of the Kings Justices do arrest one, who made an affray before him sitting in place of Justice, and a stranger shall rescue the Prisoner, whereby he escapeth; this is misprision of Treason in them both, for that the arrest by the Justice was (in Law) the arrest of the King himself.

*Stamf.* 37. Note, that every Treason, or Felony, do include Misprision, so that where any person hath committed Treason or Felony, the King may cause the Offender to be Indicted and Arraigned but of Misprision.

‘Misprision is properly, when one knoweth that another hath committed, or is about for to commit any Treason or Felony, but was not, or is not, consenting thereto, and will not discover the Offender to the King, or his Council, or to some Magistrate, but conceals the Offence, *Stamf.* 37. *Stat.* 5 E. 6. c. 11.

*Stamf.* 37. ‘Compounding of Felonies, is also Misprision of Felony at the least, if it be not Felony.

For Misprision of Treason, the Offender shall forfeit to the King his Goods and Chattels for ever, and the profits of his Lands during his life, and also shall be imprisoned during his life, *Br. Trea.* 19. & *Stamf.* 38.

For Misprision of Felony, the Offender shall be only fined (and ransomed) by the Justices, before whom he shall be attainted, and shall be committed to Prison until he hath paid his Fine. See *Br. Trea.* 25. & *Finch. lib.* 2. *The forfeiture.*

*3 H. 7. f. 10* For High Treason, the Offender being a man, shall be drawn upon a hurdle unto the place of execution, and there shall be hanged by the neck, cut down alive, and his Intrails and Privy-members shall be cut from his Body, and be burnt within his view; and then his head shall be cut off, and his Body quartered, and then to be disposed of at the Kings will. *Judgment.*

*Vide Co. L. 13. 31. & 37.* Also he shall forfeit all his Lands and Goods to the King: yea, at this day (by the Stat. made 26 H. 8. cap. 13. & 3 Ed. 6. cap. 11.) his Lands entailed shall be forfeited, and his Wife shall lose her Dower (saving in certain cases) *Vide Stamf.* 182. & 187. *Co.* 1. 103. 3. 10. & 7. 33. 34. & *Dyer* 289. & 332. *Plo.* 237. b. 249. b. 554. b. & 559. *Est enim tam grave crimen istud quod vix permittitur heredibus quod vivant: Et si aliquando forte ad successionem admittuntur tales, hoc magis erit de gratia quam de jure, Br. lib. 3. fol. 118.*

But the Judgment and Sentence of Condemnation upon a Woman in case of Treason, is, That she shall be drawn upon a hurdle unto the place of execution, and there burned, *Stamf.* 182. c.

*13 Ca. 2. & 24.* “If any shall bring his Action against any for making any kind of purveyance contrary to 12 Ca. 2. c. 24. And any other shall after notice, that the Action is grounded on that Statute, shall procure that Action to be delayed or stayed before Judgment by colour of any order, power, warrant or authority; save only of the Court where that Action is depending, or after Judgment shall cause or procure execution to be delayed or stayed by any order, warrant, power or authority; save only by Writ of Error or Attaint, or order of that Court where such Writ of Error or Attaint is depending. The person offending shall incur a *Premunire*.

In

In case of *Præmunire*, the Offender (being attainted upon the Statute of 16 Rieh. 2.) shall forfeit all his Lands which he hath in Fee for ever, and all his Goods and Chattels to the King; but his Lands, whereof he hath an estate tail, he shall forfeit only during his life; and shall be imprisoned during his life. But some do hold, That if the Offender be attainted upon the Stat. of 27 Ed. 3. cap. 1. there the Offender shall forfeit nothing, if he appeareth at the day of the *Præmunire* returned. See that Stat. & *Br. Præm. 6. & Cromp. Antor ders cots. 97.* Yet others do hold, That as upon the Statute of 16 R. 2. cap. 5. the Offenders shall forfeit their Lands and Goods if they be attainted (*Br. Præm. 6. & 20.*) so upon the Stat. of 27 E. 3. if the Offender do appear and plead, and be found guilty, he shall have the Judgment of *Præmunire, sc.* to be put out of the Kings Protection, and shall forfeit his Lands, Goods, and Chattels to the King, and his Body shall be imprisoned during his life, (or until he hath made fine and rancome at the Kings will.) See the Stat. and Co. 11. 34. and the old *Natur. Bre. fol. 159. Co. L. 130. & 391.*

Now for the Offenders in High Treason, Misprision of Treason, and *Præmunire*, although the Justices of Peace (by their Commission, nor by Stat.) cannot meddle with them in the very point of their offences, saving in some particulars, and that by way of enquiry only, which you may see *hic antea, tit. Felony.* Yet for that all Treasons, and such other offences are against the Peace of the King, and of the Realm, therefore upon complaint made to the Justice of Peace, or other knowledge had by him of any such Offenders, it shall be his part to cause such Offenders to be apprehended, and to joyn with some other Justice of Peace in taking their Examination, and the information upon Oath of such as bring them, or of others that can prove any thing material against them, and to put the same in Writing (under the hands of the Informers) and then to commit the Offenders to the Gaol; and also to bind over by Recognizance all such as do declare any thing material, to appear and give evidence against such Offenders, before the Lords of the Kings Majesties Privy Council, or in the Kings Bench, or at the Assizes and Gaol-delivery, or elsewhere, when they shall be called upon reasonable warning, and after to certify their doings therein to some of the Lords of His Majesties said Council.

Note that all Treasons, misprision of Treason, and concealment of Treason, done or committed out of the Realm, shall be inquired of, and tried within the Realm, *sc.* in the Kings Bench, or else before special Commissioners. See Stat. 35 H. 8. cap. 2. & 5 E. 6. cap. 11. *P. Treas. 18. & Dyer 287. 298. 132. 360. Co. 7. 23. & 11. 63.*

### Petty Treason. CHAP. CXLII. V. 91.

§. 1.  
Defined.

**P**etty Treason is, when wilful murder is committed (in the estate *Oeconomical*) upon any subject, by one that is in subjection, and oweth faith, duty, and private obedience to the party murdered, as in these cases following.

§. 2.  
By a Servant.

If a servant maliciously killeth his or her Master or Mistress, this was petty Treason by the Common Law, *Stamf. 10. 1. Br. 8. 12. & Co. 11. 34. & 25 E. 3. cap. 2.*

A servant of the age of thirteen years killed her Mistress, it was adjudged in her petty Treason. *Br. Treas. 12.*

*Stamf. 10.* A Servant that is departed out of service, and a year after killeth his Master upon malice conceived when he was in the said service, it is Petty Treason, *Br. Treas. 151. 33. Aff. 1. 7. Co. 1. 99. b.*

*Cromp. 19. 20. 2.* A servant doth procure another to kill his Master, who killeth him in the servants presence; this is Petty Treason in the servant; and Murder in the other. See *Plö. 100. a. & Br. Coro. 119. & quere.*

*Dyer 128.* But if the stranger doth kill the Master in the servants absence, then the servant is only accessary to the Murder, but it is no Petty Treason in him.

*Dyer 128.* A servant conspireth with a stranger to Rob his Master, and at a time appointed in the night, he letteth in the stranger into the house, and leads him to his Masters Chamber, and the stranger killeth his Master, the servant standing by but saying nothing, this is Petty Treason in the servant, and Murder in the stranger: yet by some, this is but Murder in the servant, *Ibid. & 40. Aff. Br. Cor. 119.* For where the principal is but a Felon, the accessary cannot be a Traytor. See *Plö. 100. a.* that the servant is a principal in this case, and after, *tit. Accessary.*

*Cromp. 20.* A servant commands one to beat his Master, and he killeth him, this is Petty Treason in the servant, if he be present.

*Cromp. 20.* A servant upon malice premeditated, shooteth at a stranger, and misleth him, and killeth his Master being by; this is Petty Treason in the servant, (though he intended no hurt to his Master, yet) because he intended Murder thereby.

*Br. Treas. 301.* The Wife maliciously killeth her Husband, this is Petty Treason. 25 *Ed. 3. cap. 2.*

*§. 3. The Wife.*

The Husband maliciously killeth his Wife, this is but Murder.

The reason of this difference, is, for that the one is in subjection and oweth obedience, and not the other.

*Dyer 33.* The wife and a servant do conspire to kill the husband, and the servant killeth him in the wives absence; this is Petty Treason in them both.

*Dyer 118.* The Wife and a stranger do conspire to kill her Husband, and he killeth her Husband in the Wives absence; this is no Petty Treason in the Wife, but Murder in the stranger, and she shall be hanged as accessary to the Murder.

*Cromp. 20. 2.* Also where the Wife or servant procuring, conspiring, or practising such Murder, at the time of such Murder is in the same house, though they be not present thereat, but are in another Room, yet it is Petty Treason in them, as it seemeth by two cases reported by Master *Crompton* in 4 & 5 *Mar.*

*Plö. 474. Co. 9. 81. See more in the title of Murder* The Wife poysoneth a thing, to the intent to poyson her Husband therewith, the Husband eateth of it, and becometh very sick thereof, but recovereth, after a stranger eateth thereof, and dyeth thereof, this is only Murder in the Wife.

*Cromp. 20.* The Wife poysoneth an Apple to the intent to poyson a stranger therewith, and layeth it to that purpose in a secret place, and the Husband by chance eateth of it, and dyeth thereof within a year and a day, this is Petty Treason in the Wife, for that she intended Murder thereby.

*Cromp. 20.* The Wife poysoneth an Apple, or other thing, and delivereth it to *B.* (knowing nothing of the poyson) to give to *C.* and *B.* giveth it to the Husband, (without the assent of the Wife) who eateth thereof in the Wives absence, and he dyeth thereof, this is Petty Treason in the Wife.

And yet if *A.* lay impoysoned fruit for a stranger, being his Enemy, and his Father or Mother come and eat it, *Sir Fr. Bacon* maketh a *quere* whether



‘ther this be Petty Treason, because it is not altogether *Crimen paris gradus*. But saith he, *in criminalibus sufficit generalis malacia intentionis cum facto paris gradus. Regula 15. pag. 65. 66.*

§. 4. The Child maliciously killeth his Father or Mother, this is Petty Treason (although the Father or Mother at the same time gave neither meat, drink, nor wages to such Child: ) But it is Treason in the Child, in respect of the duty of nature violated. *Vide Ba. 53.* 21 E. 3. 17.  
Co. 7. 13. b  
Et. Treas.  
6.

A Bastard killeth his Mother, this seemeth Petty Treason, for the Mother, is certainly known.

‘By the Law of God, he that only smiteth, or curseth his Father, or his Mother, shall die the death, *Ex. 21. 15. & 17.*

The Son or Daughter in law, killeth the Father or Mother in law, with whom they dwell and do service, and have meat and drink, it is Petty Treason, although such Child take no wages; but the Indictment shall be by the name of Servant. Dallison  
Rep.  
2. M. 1.

§. 5. A Clerk, or any Ecclesiastical person, maliciously kills his Ordinary, or Superior, to whom he oweth obedience, this is Petty Treason. 19 H. 6. 28 E. 4. c. 2.  
1 Br. P.  
Treas. 7.

Note, that unto the Bishop of every Diocese, the Clerks within their Diocese do owe faith and obedience, which is called Canonical obedience. *Finch 137.*

Note further, that whatsoever act will prove Murder between strangers, the same will make Petty Treason from the Servant to his Master, from the Wife to the Husband, from the Child to the Father or Mother, and from the Clerk to his Prelate or Ordinary, *Mutatis mutandis.*

‘Otherwise it is between these persons, where it is not wilful Murder: ‘as if the Servant should kill his Master upon a suddain falling out, without any malice precedent, or by misadventure, or *se defendendo*, these are not Petty Treason, neither shall the Indictment be Proditory, &c. And so of the Wife or Child.

Breaking of Prison, whereby Prisoners that were therein for Treason do escape, this is also Petty Treason, 1 H. 6. 5. Br. 11. Scut. 11.

A Norman being Captain of an English Ship, wherein also were certain English men, and they robbed upon the Sea; this was adjudged Felony in the Norman, and Treason in the English-men, and they were drawn and hanged, 40. Aff. p. 25. Br. Coron. 119. & Treason 16.

But at this day all Felonies, Robberies, Murders, and Pyracies, done upon the high Sea, are to be tryed before the Lord Admiral in the Court of the Admiralty, and according to the Civil Law. Or they may be attainted before Commissioners, by force of the Stat. of 28 H. 8. 15. and then they shall forfeit their Lands, and their blood shall be corrupted, *Co. L. 39.*

Also it hath been adjudged Petty Treason in some Books, and Felony in some other, for an Indictor ( in case of Treason or Felony ) to discover the Kings Council and their Fellows ( *sc.* to discover to others, what person they have indicted; or if they have indicted any, then to shew to others what they have done therein, and by whose means, &c. ) But now that offence is taken only to be finable to the King. Scut. 1.  
36.  
1 Br. Cor.  
207. 272.  
Br. Cor.  
113.

§. 6. The punishment of Petty Treason is this; The man so offending shall be drawn and hanged; the Woman shall be burned alive, in case as well for Petty Treason, as of High Treason, 1 R. 3. 4. But in case of Felonies, the Judgment both of man and woman is to be hanged. 1 R. 3. 4.  
Br. Treas.

Also no person or persons ( be they Lay, or within Holy Orders, &c. ) which shall be attainted, or found guilty of any manner of Petty Treason,

nor

nor any accessory thereto before the Fact, shall be admitted to have the benefit of his or their Clergy. See the Stat. 12 H. 7. c. 7. 23 H. 8. c. 1. 28 H. 8. c. 1. 32 H. 8. c. 3. 1 E. 6. c. 12. & 4 & 5 Ph. and Ma. cap. 4.

The Forfeiture for petty Treason, is, the King shall have his Goods; and for his Lands the King shall have *annum, diem, & vastum*, and the Escheat thereof shall be to every Lord, of his own proper fee, 25 Ed. 3. cap. 2. But for petty Treason, or Felony, if the Offender hath but an Estate-tail in his land, he shall forfeit them but during his life, *stamf.* 186, 187. And for petty Treason, if the Husband be attainted, the Wife shall be barred of her Dower, *Co. L.* 37.

Flo. 186.

The Justices of Peace may inquire of petty Treason, as of Felony: and out of their Sessions, every Justice of Peace may deal with the Offenders therein, as in case of Felony, by Examination of the Offenders, by taking Information against them, and binding over the Informers to the General Gaol-delivery, and committing the Offenders to the Gaol.

Of Felonies by the Common Law. CHAP. CXLI. V. 92.

**F**elony, by some this word is derived, *Quasi felleo animo factum. L. & Co. 4. 124. Ideo dicta est felonia, quia fieri debet felleo animo* (with a mind as bitter as gall.) *Minsb. verbo felon*, saith it cometh of the French word *felon*, *id est, atrox, crudelis: vel a velando, cum celari & occultari semper velit. Felonia est omne crimen capitale infra lesam Majestatem.*

§. 1.

So in the Law at this day, under the word Felony, is included petty Treason, Murder, Homicide, Chance-medly, *se defendendo*, Burglary, Robbery, Theft, Rape, Burning of Houses, petty Larceny, Rescous and Escape, &c. *Co. L.* 391.

§ EL. 9.

"Thus generally it seems to be taken in many Statutes, as particularly in the Statute of 3 Eliz. c. 9. Where it is said, That all persons shall be ready and apparelled at the commandment of the Sheriff, and cry of the Countrey, to pursue and arrest Felons: And they that will not so do, and thereof be attainted, shall make a grievous Fine to the King; and if default be in the Lord of a Franchise, the King shall seize his Franchise. And if any Sheriff, Coroner, or any other Bailiff, for Prayer, Fear, or Affinity; that is Kindred or Relation by Birth or Marriage, shall conceal, consent, or procure to conceal Felonies; will not do their Offices, and be thereof attainted, shall have one years Imprisonment, and pay a grievous Fine, and if he hath not wherewith to pay, shall have three years Imprisonment.

Homicide most properly is, *hominis occisio ab homine facta*; for if a man be killed by a Beast (as a Horse, or a Dog) or by any other thing or mischance, although that be *hominis cedium* (of which two words, Homicide is derived) yet in such cases it is not aptly nor usually said, that Homicide is committed, but only a man is said to be slain. *Bracton* 120.

§. 2.

Homicide

Lamb. 235

Others do thus define or describe it, Homicide, is the felonious killing of one man by another within the Realm, and living under the Kings protection.

But to kill a man beyond the Seas, or to strike and give one a mortal wound beyond the Seas, or upon the Sea, whereupon he dyeth upon the Land (within this Realm) these Homicides are not punishable as Felony by the Common Law; for that they cannot be inquired of, nor tried here; for in criminal cases, the rule is, *Ubi quis delinquit, ibi punietur*. So *Co. 2. 93. 6. 47.* But in Treason it is otherwise. See hereof, *Paulo antea.*

And yet yet all appeals to be made of things done out of the Realm, shall be tried before the Constable and Marshal of *England*, by the Statute 1 *H. 4. cap. 14*. So that if any of the Kings Subjects shall be killed by another of the Kings Subjects in *Scotland*, or in any Forraign Realm, the Wife or Heir of him which is so slain, may have an appeal thereof in *England*, before the Constable and Marshal, &c. *Stamf. 63. b. Vide Co. L. 74.*

Also to kill a man upon the Sea, although it be not tryable by the Common Law, yet it is Felony, and is inquirable and tryable in the Admiral Court; for those of the Admiralty have Jurisdiction, where both the stroke and dying is upon the Sea; otherwise not. And therefore in 25 *Eliz.* it was adjudged in one *Lacys* case, That where the said *Lacy* had stricken *Peacock*, and given him a mortal wound upon the Sea, whereof *Peacock* dyed at *Scarborough* (in *Torkshire*,) the said *Lacy* was discharged thereof, for that those of the County of *Tork* could not enquire of the death without enquiry of the stroke; and the stroke they could not enquire, for that it was not given within any part of the County. See *Co. 2. 93. & 5. 106, 107. & Stat. 15 R. 2. cap. 3. & 2 H. 5. c. 6*. But yet by the Statutes made Anno 27 *H. 8. c. 4. & 28 H. 8. c. 5*. all offences of Pyrac, Robbery, Murther, or other Felony done or committed upon the Sea, (or in any other Haven, River, or Creek, where the Admiral pretends to have Jurisdiction) shall be enquired of, heard, tryed, and determined in such Shires and places within the Realm, and before such persons as shall be limited and appointed by the Kings Commission, and after the common course of the Laws of the Land, used for Felonies committed within the Realm; and such as shall be so convict of any such offence, shall have and suffer such pains of death, and forfeiture of Lands and Goods, as if they were convict of Murther or Felony done upon the Land.

But whether he that is slain, be an Alien, or a Denizen, an English-man or stranger, it maketh no difference (if he live within this Realm under the Kings protection.) Lamb. 139

To kill a man that is attainted (by Verdict, or by Outlawry, or otherwise) of any Murder, Felony, or Treason, is Felony: for none may kill or put to death any of these, but the Officer of Justice, and by lawful warrant. See *Doct. and Stud. fol. 133. Co. L. 128. b.* Co. 7. 13  
14.  
Crom. 24

Also to kill a man attainted upon a *Premunire*, is Felony at this day. See *Co. 7. 14* the Stat. 5 *Eliz. cap. 1. & Co. 7. 14. Co. L. 130.*

Also to kill a man that hath abjured the Realm, is Felony. See *Co. 7. 9. b.* and the *Doct. & Student, fol. 133.*

For note, That the Kings protection belongeth by the Law of Nature to all these, and the King may protect and pardon them all.

§. 3.  
Kinds of  
Homicide.

Homicide is threefold:   
 1. *Voluntate; et est duplex.*   
     { Murder, *scilicet*, of a malicious purpose.   
     { Man-slaughter, or Chance-medly, of a sudden.   
     *Casu*, or Misadventure: this also is considerable after two sorts,   
     *scil.* whether it happen in doing a thing   
         { Lawful,   
         { or   
         { Unlawful.

2. *Necessitate; this is sometimes*   
     { Commanded, *sc.* in execution of Justice.   
     { Tolerated   
     { Prohibited. See *post tit. Homicide.*   
     { For advancement of Justice.   
     { *Se defendendo.*

“*Bracton* divides Homicide into two sorts,   
     { *Lingua, vel*   
     { *Facto.*

“*Lingua,*



\* *Lingua, tribus* } *Præcepto*  
                   *modis.* } *Consilio* } *de his vid. cap. 108.*  
                           *Tuitione*

\* *Facto, quatuor* } *1 Voluntate, de qua postea.*  
                   *modis.* } *2 Justitia* } *de quibus postea.*  
                           *3 Necessitate*  
                           *4 Casu, de qua postea.*

## Felo de se. CHAP. CXLIV.

**B**Ut first to write something of *Felo de se*, 'who destroyeth himself by hanging, poysoning, drowning, or otherwise.

For the hainousness thereof, it is to be observed, That it is an offence against God, against the King, and against Nature. Also it is within the degree of, or of the quality of Murder, *sc.* pretended and resolved of (in his mind) to be done, before it be done: yea it is holden to be a greater offence then to kill another man, *Plow.* 261. & *in hoc casu Christiana sepultura interdicatur.*

And yet the Civil Law maketh a difference of such Offenders, and of their punishment, according to the quality of their minds, whereby they were moved to kill themselves; for if they kill themselves through grief or impatience of some infirmity, no punishment followeth such their fact (by the Civil Law) but they are left to the Tribunal of the Almighty Judge of the Quick and the Dead; But if they kill themselves upon any other cause, their goods are confiscated, and their dead bodies (for the terrout of others) are drawn out of the house, &c. with Ropes, by a Horse, unto a place appointed for punishment, or shame, where the dead body is hanged upon a Gibbet; and none may take down the Body but by the authority of the Magistrate; &c. *Vide Fulbeck 90. & Dr. Cowell; 249.*

But by the Common Law, if a man kill himself (either with a meditated hatred against his own life, or out of distraction, or other humour) he is called *Felo de se*; and he shall forfeit to the King all his goods and chattels real and personal, and his debts due to him by specialty (but no debts due to him without specialty, or upon simple contract; *Dyer 262. 16 E. 4. 7.*)

And their goods are usually granted and allowed by the King to the Bishop *Almoner*, and in such sort as *Deodands* are, *Ba. 3. V.*

But he shall not forfeit his Lands, neither shall his Blood be corrupt. See *Fitz. Coron. 362. & 426.*

Yet if a man be guilty of another mans death, or of a manifest Theft, &c. and be taken, and for fear thereof killeth himself: here he shall forfeit his Lands, *ac heredem non habebit, Braff. lib. 3. cap. 13.*

If a man do give himself a deadly wound, and dyeth thereof within a year and a day after, all his goods, &c. which he had at the time of the blow given, or any time after, shall be forfeited to the King, *Plow. 262. ab.*

Yet the goods of *Felo de se*, be not forfeited till his death be presented and found of Record, neither can these goods be claimed by prescription, (by Lords of Liberties, &c.) but by the Kings grant.

And although he cannot be attainted of his own death, for that he is dead before that there is any time to attain him, yet the finding of his death by the Coroner (or other person thereto authorized) is by Law equivalent to an Attainder indeed, as to his goods, *Plow. 258. b.*

If *A.* do strike *B.* to the ground, and then draweth his Knife to kill *B.* and *B.* lying upon the ground draweth his Knife to defend himself, and *A.* is so hasty to kill *B.* that he falleth upon *B.* his Knife, and so *A.* is slain; here *A.* in a manner is *Felo de se*, and yet shall not *A.* forfeit his goods in this case, *Br. Co. L. 12.* See 44 *As. p. 17. Br. Cor. 12. & 14.* that *A.* was adjudged not to be *Felo de se* in this case.

'If *A.* of malice prepened dischargeth a Pistol at *B.* and misseth him, and throws down his Pistol and flyeth, and *B.* pursueth him to kill him, whereupon *A.* turning, falleth down, his dagger drawn, and *B.* through hast falleth upon the dagger, here *B.* is *Felo de se*, and *A.* shall go quit, 44 *E. 3. Sir Fr. Bacon. 4. 5.*

'If a Caliver be discharged with a Murtherous intent at *J. s.* and the piece breaks, and strikes into the eye of him that dischargeth it, and killeth him, he is *Felo de se*; and yet his intention was not to hurt himself: for *Feloniam de se*, and Murther, are *Crimina parvi gradus*. See *Ibid. p. 65.*

'And in such case he shall forfeit his Lands, *quia convincitur, Bract. lib. 13. cap. 31.*

If one that wanteth discretion, killeth himself, (as an Infant, or a man *non compos mentis*) he shall not forfeit his goods, &c. *Bract. Ibid.*

§. 3. If a Lunatick person killeth himself, he shall forfeit his goods, (*Fitz. Coron. 324.*) but this must be understood when he killeth himself out of his Lunacy: otherwise it is if he killeth himself during his Lunacy, for then he shall neither forfeit his goods, nor be counted *Felo de se*.

If one being of *Non sana memoria*, or a Lunatick, giveth himself a mortal wound, and after he becometh of sound memory, and then dyeth of the same wound, in this case, although he dyeth by reason of his own proper stroke, yet for that the original cause was committed when he was *de non sana memoria*, he shall not be accounted *Felo de se*, neither shall he forfeit any thing, for that the death hath relation to the original act, the which was the stroke or wound given when he was *de non sana memoria*, *Co. 1. 99. b. & 4. 42. a. Fitz. Coron. 244. Pl. 260.*

§. 4. The Inquiry of such a Felony belongeth to the Coroner: And yet if *Felo de se*, be cast into the Sea, or secretly buried, that the Coroner cannot have the sight of his body, and so cannot enquire thereof; then the Justices of Peace, or any other having authority to enquire of Felonies, may inquire thereof (for that it is Felony:) and a presentment thereof found before them, intituleth the King in his Goods.

### Murder. CHAP. CXLV. V. 93.

§. 1. **O**F old time every killing of one man by another, was called Murder, (of the effect) because death ensued of it. Afterwards Murder was restrained to a secret killing only; and therefore *Bracton* and *Britton* in their definition of Murder, calleth it *Occulta occiso nullo presente præter interfecitorem & suos coadjutores, &c.* But since Murder hath been, and is taken in a middle degree, neither so largely as it first was, nor so narrowly as *Master Bracton* and *Britton* speaketh of it. For Murder is now construed to be when one man upon malice prepened, (*sc.* forethought) or precedent and with his will, doth kill another Feloniously, *viz.* with a premeditate and malicious mind, whether it be openly or privily done, this is Felony of death, without any benefit of Clergy, 23 *H. 8. cap. 1. & 1 Ed. 6. cap.*

Exod. 21.  
13.  
Numb. 35.  
20.  
Deut. 19.  
11.

Stamf. 18  
Plow. 264

6. cap. 12. See *Exod.* 21. 14. he shall be taken from the Altar and put to death.

This malice prepenſed or precedent, may be either apparent (as where there was a precedent falling out, or where there is a lying in wait, or a time and a place appointed, &c.) or it may be leſs apparent or manifeſt, and yet ſhall be implied, preſumed, and taken to be out of malice precedent, by the manner and circumſtances thereof. §. 2. Malice.

As where one killeth another without any provocation, the Law implieth, and adjudgeth it to have proceeded of malice prepenſed: therefore if one ſuddenly, and without any ſhew of quarrel or offence offered, ſhall draw his Weapon, and therewith kill another.

Or if one ſhall be reading of ſome Book, or otherwiſe buſied, ſo as he ſaw not the Party that ſhall ſtab or ſtrike him (and he dyeth thereof;) or ſhall be going over a Scile, &c. and another ſhall kill him; ſuch Offenders ſhall ſuffer death, as in caſe of wilful Murder.

And accordingly hath the Statute 1 Jac. well provided, That if one ſhall ſtab, ſtrike, or thruſt another, that hath not then a weapon drawn, or hath not then firſt ſtricken the other; and if the Party ſo ſtabbed, ſtricken, or thruſt, &c. ſhall dye thereof within fix moneths after, although it cannot be proved that the ſame was done of malice forethought; yet the Offender being thereof lawfully convicted, ſhall ſuffer death as a wilful Murtherer, without benefit of Clergy.

To kill the Sheriff or any of his Officers, in their execution of the Kings Proceſs, or in doing their Office, is murder in him that killeth the Officer. §. 3. Officer.

But if he be not an Officer known, he muſt ſhew his Warrant, before he arreſt the Party, or upon the arreſt (if the other ſhall demand to ſee it) or elſe it ſeemeth the arreſt is tortious; and where the arreſt is tortious (be it by an Officer known, or by another) there the killing of him that maketh ſuch an unlawful arreſt, is no Murder, but Man ſlaughter only, as it ſeemeth. Again, where an Officer hath the Kings Writ, or other lawful

Warrant, though it be erroneous, yet in the executing thereof, if he be ſlain, this is Murder, Co. 9. 68.

For the Officer is not to diſpute of the validity of his Warrant, or the authority of the Court (or of the Juſtice of Peace) that ſent the Warrant; but his Office is to execute the Writ or Warrant.

To kill any Magiſtrate, or Miniſter of Juſtice, in the execution of their Office, or in keeping the Peace (according to the duty of their Office) is Murder in ſuch Offenders, for their contempt and diſobedience to the King and the Law; and the Law implyeth it to be of malice prepenſed. And therefore if the Sheriff, Juſtice of Peace, High Conſtable, Petty Conſtable, Watchmen, or any other Miniſter of the King, or any that come in their aid, be killed in doing their Office, this is Murder.

If the Sheriff, or Juſtice of Peace, come to ſuppreſs Riotors, and one of the Sheriff or Juſtices Company is ſlain by one of the Riotors; this is Murder in all the Riotors that be there preſent.

A Conſtable, with others to aid him, do come to part an affray, if the Conſtable, or any of his Company ſhall be ſlain in doing this his Office, it is Murder in him that killed him, although the affray were on the ſuddain, and though it were in the night: for when the Conſtable commands them in the Kings name to keep the Peace, although they cannot know him to be a Conſtable, yet at their Peril they ought to obey him upon ſuch Commandment.

And



And in these cases, the killing of such an Officer, or any of their Company, is in Law intended to be by malice prepenſed, ſc. that the Murderer had a malicious reſolution in him, to oppoſe himſelf againſt the Law; the Officers thereof, and the Juſtices of the Realm. Co. 9. 67.  
68.

Alſo a Thief that offereth to Rob a true man, killing the true man in reſiſting him, it is Murder of malice prepenſed, *Plow. 474. Co. 9. 67.* Flo. 174.

§. 4. A man carried his Father (being ſick, and againſt his Will) in a froſty and cold time, from one Town to another, and the Father dyed thereof; this was adjudged Murder in the Son. 2 E. 3. 18.

A Harlot delivered of a Child, hid it in an Orchard (it being alive) and covered it with leaves, and a Kite ſtruck at it, and the Child dyed thereof, and the Mother was arraigned, and executed for Murder. 2 Eliz.  
Cromp. 24.

A man hath a Beaſt that is accuſtomed to do hurt, and the Owner knowing thereof, doth not tie him, or otherwiſe keep him faſt ſhut up, but ſuffereth him to go at liberty, and after the Beaſt killeth a man; this is Felony in the Owner of the Beaſt: for by ſuch ſufferance, the Owner ſeemeth to have a will to kill, *Exod. 21. 29.* Fit. Co.  
311.  
Stamf. 17.  
Exod. 21.  
29.

So if a man hath a Horſe of that property, that he will ſtrike ſuch as come near him, and his Maſter knowing this, rideth upon the ſame Horſe amongſt a multitude of People, &c. and the Horſe killeth a man; this is Felony in the Maſter, *Leſt. M. Cooke.*

And in theſe four laſt caſes, *voluntas reputabitur pro facto*, death enſuing thereupon: For it may plainly appear, that they had a will and meaning of that harm which followed, which will in them, doth amount to malice, and ſo makes their offences to be Murder, and in ſuch caſes where death enſueth, *Nihil intereſt, utrum quis occidat, an cauſam mortis præbeat.*

The ſame Law ſeems of an Officer, who being appointed and authorized to whip, or with an hot Iron to burn, or brand, or otherwiſe to puniſh an Offender, ſhall do it with ſuch rigour, or in ſuch extream manner, as that the Offender by reaſon and means thereof dyeth.

If a man perſwades another to kill himſelf, and be preſent when he doth it, he is a Murtherer, *Ba. 65.*

§. 5. The Book called *Speculum Juſticiar.* ſpeaking of *Homicida voluntate*, ſaith, it may be, either by ſtriking, imprisonment, famine, or other pain. P Cor. 163  
Stamf. 16.

Four ways  
committed.

1. By ſtriking or ſtabbing, &c. as you may ſee by that already ſaid.

2. By imprisonment; as if a man by imprisonment ſhall detain the Body of another (under colour of Law, or right) unto death, or ſo as he dyeth thereby. See *hic verbo, Gaoler.*

3. By Famine; as if a man ſhall caſt, or leave an Infant, or other perſon which cannot go, in a deſert, or ſuch other place, where no perſon uſually reſorts, by reaſon whereof ſuch Infant, or other impotent perſon, dyeth for want of ſuccour, &c.

4. By pain; as if a man by torture (or *Dures*) cauſeth another to accuſe himſelf mortally, where in truth he did not the thing, but to be rid of the pain (rather deſiring death) he confeſſeth himſelf guilty of the Felony, when he is not guilty.

If a man dyeth in the hand of a Phyſician or Chyrurgion authorized to practiſe, this is no Felony in the Phyſician or Chirurgion. And yet if a Phyſician bearing malice to one who is under his Cure, ſhall give him a Medicine contrary to his Diſeaſe, whereof the Patient dyeth; this is Felony in the Phyſician, *Leſt. M. Cooke.*

If a Chyrurgion authorized, do through negligence in his Cure, cauſe the Party to dye, the Chyrurgion ſhall not be brought in queſtion of his life;

life; and yet if he do only hurt the wound, whereby the Cure is cast back, and death ensues not, he is subject to an action upon the Case for his misfeasance, Sir Fr. Ba. 37.

And if one which is no Physician or Chyrurgion (or which is not allowed to use or practise such faculty) will take a Cure upon him, and his Patient dyeth under his hand; this hath been holden to be Felony: but *quere* of this last case, for it cannot be discerned whether the Patients death cometh by any wilful default, in the Party taking such Cure upon him, or by the Patients infirmity: again, there appeareth in them no will to do harm, but rather to do good; and then the Stat. of 54 H. 8. 8. leaveth so great a liberty of such practice to unskilful persons, that it will be hard now to make it Felony. But if a Smith, or other person (having skill only in dressing or curing the Diseases of Horses, or other Cattel) shall take upon him the cutting or letting Blood, or such like Cure of a man, who dyeth thereof, this seemeth to be Felony; for the rule is, *Quod quisque norit, in hoc se exerceat*.

Two playing at Tables, fall out in their Game, and the one killeth the other with a Dagger suddenly; this was holden Murder, in one *Emerges* Case, before *Bromley*, at the Assises in *Cheeshire*, about 27 El. as Master *Crompton* reporteth.

The Husband, upon words between him and his Wife, suddenly stroke his Wife with a Pestel, whereof she dyed, and it was adjudged Murder at the Assises at *Strafford*, before *Walmesly*, 43 Eliz.

§. 6.  
Provocati  
on.

*Quere*, the reason why it should be Murder in these two last cases, considering there appeareth no precedent malice, and that it was done upon the sudden, and upon provocation.

"The reason seemeth to be, for that in these two cases was no sufficient provocation to take off the imputation of malice; for it was resolved in my Lord *Morleys* case (as I heard Mr. Justice *Wildefay* in the Common Pleas) that words were no sufficient provocation to excuse the malice intended.

"*Bird* challenges *Taverner* to Fight, and appoints time and place, for that *T.* paid him not some Money he owed him. *T.* paid the Money duely, and then for the Preservation of his Reputation, meets at the place appointed, and *B.* kills *T.* and this was adjudged Murder; for the Law respects not who gave the first occasion, if the other accept and undertake the Quarrel; and such Fights grew from settled determinations and purposes to kill, and all deaths hapning of Fights upon Challenges are Murder. P. 14 Jac. Rolls. Rep. part 2. p. 260.

§. 7.  
Challenges.

*A.* hath wounded *B.* in Fight, and after they meet suddenly, and Fight again, and *B.* killeth *A.* this seemeth Murder, and malice shall be intended in *B.* upon the former hurt; but now if *A.* had killed *B.* this seemeth but Man-slaughter in *A.* for his former malice shall be thought to be appeased by the hurt he first did to *B.*

Two were in Suit, and they meet suddenly, and quarrel about the Suit, and the Defendant killeth the Plaintiff; this seemeth Murder. *Tamen quere*.

If *A.* of malice prepaensed, discharge a Pistol at *B.* and misseth him, and throws down his Pistol, and flies, and *B.* pursueth him to kill him, whereupon *A.* turneth, and killeth *B.* with a Dagger: if the Law should consider the last impulsive cause, it should say, that it was in his own defence: But the Law is otherwise, for it is but a pursuance and execution of the first murderous intent: and the first motive will be principally regarded, and not the last impulsion. Otherwise, if there had been a full interruption, Sir Fr. Bacon 4.

Also

§. 8. Also wilful killing of another by Poyson, was, and is, Murder by the Poysoning. Common Law. See *Stamf.* 21. & *Br. Indictment* 41.

And the Offenders therein, their Aiders, Abettors, Procurers, and Counsellors shall suffer death, and forfeit in every behalf, as in other cases of wilful Murder of malice prepensed, 1 E. 6. cap. 12. *Speculum Justic.* describeth these Offenders thus, *Qui donec aliter a manger, ou autrement chose envenom.*

The Husband gave a poysoned Apple to his Wife, to the intent to kill her, and she not knowing of it, to be poysoned, gave it to her Child, who dyed thereof; this is Murder in the Husband, and yet he loved that Child dearly: and so had it been, if a stranger of his own accord had after eaten thereof, and dyed thereof: for the putting of poyson into the Apple, &c. upon an evil and felonious intent, maketh it Murder, whosoever be killed thereby. Flo. 474  
Co. 3. 81

A. bringeth Drink that was poysoned (knowing of it) to B. and advised B. to drink of it, telling him, it would do him much good; by reason of which perswasion, B. drunk of it (in the absence of A.) and dyed thereof, this was adjudged Murder in A. although he were not present at the time of the taking of the poyson. If one giveth corrupt Victual to another, to the intent to poyson him, and he dyeth thereof within the year and a day; this is Murder. One layeth corruption at another mans door, to the intent to poyson him with the savour thereof, and the other party taketh infection by the savour thereof, and dyeth; this is Felony. *Leff. M. Cooke.* Co. 4. 44  
Crom. 34

So if one giveth to another Spurge Comfets, or other such thing in sport, and not in malice, and he that so taketh them dyeth thereof; this is Felony. *Ibid.*

But if a man shall prepare Rats-bane, &c. to kill Rats, &c. and shall lay this in certain places to that purpose, without any evil intent, (sc. without any intent to kill any reasonable Creature) and another man finds and eats this, and dyeth thereof, this is no Felony, *Flo. 474.* Co. 3. 81

The Master upon malice precedent, goeth to kill another, and taketh his Servants with him, (but they knowing nothing of their Masters intent) and the Master and his Servants do meet the other, and the Master doth assault him, and the Servants taking their Masters part, do also assault him and kill him; this is Murder in the Master, and but Man-slaughter in the Servants. Flo. 100

§. 9. Note, that when a man hath malice to one, and intending and endeavouring to kill him, he killeth another man; this is Murder whomsoever he killeth, *vid. Flo. 101. Dyer 128. Fitz. 262. Stamf. 16.* For his intent was to Murder. Flo. 474

Nay, if two fight upon malice prepensed, and in their fight a stranger (that would part them) cometh between them, and is killed; this is Murder in them both, if it may not be proved which of them did kill him. Lamb. 231  
F. Corcor  
261.

A man upon malice shooteth at one, or lyeth in wait to kill one, and killeth another unwittingly, in both these cases it is Murder. Dyer 128.  
Flo. 474.

2. Note also, that in all cases where a man cometh or goeth about to do any thing unlawful, as to kill, beat, or disseise another, or to do any other Trespass; and in doing this, he killeth any man, this is Murder. See *Cromp. 24. b.*

One stealing Pears in another mans Orchard, and the Owner came and rebuketh him, and the other killed him, this was adjudged Murder, *4 Maria.* Cromp. 24  
Lamb. 237

Also



Plo. 435.  
F. Cor. 314

Also where a man commandeth another to beat *A.* and he beateth him, so as *A.* dyeth thereof; this is Murder in him that gave the Commandment to beat him, for that he commanded him to do an unlawful act, by reason whereof the killing of a man ensued.

For (as that late Reverend and learned Judge Sir *John Dodderidge*, pag. 138. sheweth) There is an efficient cause Casual; as if a man intend to do any unlawful act; and in doing thereof, another hurt ensueth, not intended, but by chance, clean beyond all expectation, or desire, yet shall he be said the author of that act not intended, (and so happening by chance) that did intend the first act.

Br. Cor.  
172.  
F. Cor.  
350.  
Co. 11. 5.

3. Note also, that if divers persons come in one Company (and as Confederates in the fact, *Stamf.* 40.) to do any unlawful thing, as to kill, rob, or beat a man, or to commit any Riot, or Affray, or to do any other Trespasse, and one of them in doing thereof, killeth a man; this shall be adjudged Murder in them all that are present of that Party abetting him, and consenting to the act, or ready to aid him, although they did but look on, &c. See *Stamf.* 40. *Fitz. Indictment* 22. *Plo.* 98. §. 10. Principal.

Nay, if they be not present, yet if they be in the same house, or upon the same ground, it is Murder in them all. See the Lord *Dacres* Case, *Cromp.* 25.

Mr. *Bratton*, fol. 121. saith further, *Si plures rixati fuerint inter se in aliquo conflictu & aliquis sit interfectus, nec appareat ex quo, nec ex cujus vulnere, omnes dici possint homicida, &c. quare*, if their meeting were upon a lawful occasion, and if they suddenly fall out, and no former malice may appear.

Flow. 100.  
See here.

4. Note also, that all that are present, and aiding, abetting, or comforting to another to do Murder, are principal Murderers, although they shall give never a stroke. See more, 4 *H.* 7. 18. 13 *H.* 7. 10. *Fitz. Coron.* 309. *Co.* 9. 67. 112. & 11. 5.

As if *A.* and *B.* fall out, and appoint the Field, and they meet accordingly, each of them bringing Company with them, *A.* killeth *B.* this is Murder in all those that came with *A.* as his second, or abetting, comforting, or ready to assist or aid him, for that the presence of these other that came with *A.* is a terror to *B.* and an encouragement to *A.* *Vide ibid.* & *Plo.* 98.

And yet if *B.* cometh in the Company of *C.* who of his malice prepened, doth go to kill *D.* and then *B.* seeth them fighting together, he taketh part with *C.* suddenly (not having any former malice to *D.*) and striketh at *D.* with the other, and *D.* is thus slain amongst them; this is but Manslaughter in *B.* for that he had no malice precedent, *Plo.* 100. See the case of the Master and his Servants here before. But note, that the cause of the coming of *B.* being unknown to *D.* his presence might, and in likelihood did strike terror in *D.* and so the presence of the Servants did or might strike terror in the Party murdered, and gave encouragement to the Master.

"If any shall stab or thrust another, that hath not any Weapon drawn, *Stabbing*  
"or hath not first stricken the party; if the party so stabbed or thrust  
"dye within Six moneths, although malice forethought cannot be proved;  
"the party offending shall not have benefit of Clergy, but shall suffer  
"death, as in case of Wilful Murder. 1 *Jac.* 8.

5. Note also, That in case of Murder, it is not material who giveth the first blow; for if he that is slain gave the first blow, yet if there were malice prepened in the other, it is Murder in him that killeth him.

6. Also

§. 11. 6. Also in case of poysoning, the party poysoned must dye thereof, with-  
Death. in a year and a day, after the poyson received.

Also if a man do beat or hurt another, whereof he dyeth, to make it Murder or other homicide, the party hurt must dye within a year and a day next after the hurt done, or stroke given. But to have an appeal, it shall have relation to the death, and not to the stroke, so as the appeal must be brought within the year after the death, and not after the stroke. Cor. 303.  
Co. 4. 42.  
Co. 4. 42.

§. 12. 7. Note also; In Murder, or other Homicide, the party killed must be  
In effe. in esse, *sc. in rerum natura*, and born into the World: For if a man hurt-  
eth a Woman with child, whereby he killeth the Infant in its Mothers Womb, by our Law (at this day) this is no Felony, neither shall he forfeit any thing for such offence: and whether (upon a blow or hurt given to a Woman with child) the child dye within her Body, or shortly after her delivery, it maketh no difference: yet in ancient time it was holden to be Felony; and M. *Bracton* took it to be homicide, if the blow were given *postquam puerperium animatum fuerit*: But if the Mother of the child dye within a year and a day after such hurt done to her, and upon that hurt, this is Felony. F. Co. 146  
263.  
Stamf. 21  
C.  
See Esod.  
21. 22, 23.  
It was  
death by  
the Law  
of God.  
Lamb. 123.  
Br. Cor. 68.  
91.

So if the Adulterer, &c. counselleth the Woman to Murder the child when it shall be born, and she doth accordingly, the Adulterer is accessory to this Felony, by this his counsel given before the birth, *Co. 7. 9.*

Also if a man killeth a man unknown, yet it is Felony, *Abr. d' Ass. 76.*

8. Compulsion also is a good excuse in our Law in some cases, as if any mans Arms be drawn by compulsion, and the Weapon in his hand by means thereof doth kill another, this is not Felony in him whose Arms were so drawn, &c. *Plow. 19. 4.*

9. Involuntary ignorance excuseth also with us: so as if an Infant not having intelligence, or a man of *non sanae memoriae*, shall kill another, this is no Felony in them. See hereof, *hic postea.*

10. Intent to do a Felony, or Murder, is not punishable by the Common Law of this Realm, until the act be done: But in Treason, and in some other particular cases by Statute, the intent may be punished. *Doct. and Stud. 132. hic.*

In cases of Murder or Poysoning, the offenders shall not have the benefit of Clergy, *1 E. 6. c. 12. 23 H. 8. 1. & 26 H. 8. 12.*

Note also, That by the Law of God no recompence was to be taken for the life of a Murderer, 'who purposely hath committed Murther, but he shall be put to death: for Murder defileth the Land; and the Land cannot be cleansed of the blood that is shed therein (by wilful Murder) but 'by the blood of him that shed it, *Numb. 35. 31, 33.*

§. 13. And by divers old Statutes, no Charter of Pardon ought to be granted  
Pardon. to any person in case of Murder or other Homicide, save only where the King may do it by his Oath, that is to say, where a man killeth another in his own defence, or by misfortune. See *P. Pardon 1.* Also the Stat. of *6 Edw. 1. cap. 9. 2 Edw. 3. cap. 2. 4 Ed. 3. cap. 13. & 14 Edw. 3. cap. 15.* 13 R. 2. c. 1  
P. Pardon 3  
Plow. 902.

And by our Law at this day, a Pardon of all Felonies will not discharge Murder, except the Pardon be with a *Non obstante*, &c. or that Murder be expressly mentioned in the Pardon. See *Co. 6. 13. b.* See the  
Stat. 2.  
13 R. 2. c.

Neither will a Pardon of all Felonies discharge a man that is attainted of Felony, except also the attainder and the execution be pardoned. See *9 E. 4. 29. Co. 6. 13. b.*

'And

'And this Pardon is twofold; one, *Ex gratia Regis*, which the King, 'in ſome ſpecial regard of the Perſon, or other circumſtance, ſheweth, and 'affordeth upon His Prerogative: The other by courſe of Law, which the 'Law in Equity affordeth for leſſer offences, as of Homicide by Miſadventure, or *Se Defendendo*.

Note, That he which hath a Pardon for Felony, if he hath not found Sureties for his good abearing, or if afterwards, during his life, he ſhall break the Peace: Such Pardon ſhall be holden for none, but that he may be hanged notwithstanding his Pardon; for by the Pardon, the offence *tegitur, non tollitur*. See 10 E. 3. c. 3. P. Pardon 5. & 3 H. 7. 7. where one was executed upon this Statute, for making an affray after his Pardon. *Br. Coron.* 134.

None have authority to pardon any Treason, Murder, or other Felony, or any accellary to the ſame, ſave only the King; it being one of His Royal Prerogatives.

Manſlaughter. CHAP. CXLVI. V. 94.

**M**Anſlaughter in right ſignification thereof, implieth all manner of Homicide, and extends in the general, as well to murder as to the reſt. Nevertheless, for that in common ſpeech it is reſtrained to Manſlaughter by Chancemedly alone, in that ſenſe I will here write of it.

Manſlaughter, otherwiſe called Chancemedly, is the killing of a Man Feloniouſly, ſc. with a Mans will, upon a ſudden or preſent heat, and fury of mind, yet without any malice forethought; as when two do quarrel and fight together upon the ſudden, and by meer chance, without any malice precedent, and one of them doth kill the other; this alſo is Felony of death. *Plo.* 101. *Br. Coron.* 22.

And yet in caſe of Manſlaughter (not being within the Statute of 1 Jac.) the offender ſhall have the benefit of Clergy for the firſt time, and by the Law of God there was a City of Refuge appointed for ſuch to flee unto, *Exod.* 21. 13. *Dent.* 19. 3, 4. *Numb.* 35. 11, 22. For in ſuch caſes of Chance (as we term it) ſc. Where the offender hath not laid wait, nor hated in time paſt, the ſame Scripture ſaith; That God offered the party ſo ſlain, into the hands of ſuch Manſlayer. *Exod.* 21. 13.

Two fall out upon the ſudden, and fight, and the one breaketh his weapon, and a ſtranger ſtanding by (yet being none of their company) lendeth him a weapon, and therewith he killeth the other: This is Manſlaughter, as well in him that killed the other, as in the Stranger, who lent him his weapon.

*A.* and *B.* fall out upon a ſudden, and fight, and *A.* is ſo fierce, that he runneth upon the others weapon, and is ſlain; yet this ſeemeth Manſlaughter in *B.* for he ſhould have fled to ſome Wall or Streight, &c.

*Quere.*

And if *B.* had fled to a Wall, &c. and *A.* purſueth him, and *B.* perceiving that *A.* would aſſault him, holdeth his weapon between them, and *A.* runneth upon the weapon, and is ſlain; this is Homicide in his own defence, and for which *B.* ſhall forfeit only his Goods: But otherwiſe it had been if *B.* had fallen, and lying upon the ground had drawn his Knife or Dagger, and *H.* falleth thereon, and ſo is ſlain; for then *B.* could not flee, nor make any other defence for his ſafety, and therefore here *B.* ſhall not forfeit his Goods, nor be culpable of his death, but be diſcharged: For *A.* in a manner killed himſelf. See hereof, *poſtea*.

Hh

Two



Two combat together upon the sudden, and part, and presently after meet and fight again, and the one killeth the other; or the one presently fetcheth a weapon, and cometh and killeth the other. These seem but Manſlaughter, for that it is done all in one continuing fury, which was at the first without malice, and could not in so short time be appeased or asswaged, *Crompt. 23. b. 24. a. 26. a. b.*

So if two have born malice the one to the other, and be reconciled, and after meeting again, they fall out upon new occasion, and by agreement immediately they go into the field to fight, and the one killeth the other; this seemeth but Manſlaughter, (*causa qua supra*) unless the respite or distance of time had been such, that by reasonable conjecture their heart might be asswaged. Lamb. 144

And yet by good opinions it is lately holden, That in both these last cases and the like, though it be in a continuing fury, yet if it be wilfully done, it is wilful Murder; for which the offender shall suffer death.

See more of Manſlaughter before in Murder, and after in Misadventure.

### What Persons are chargeable with Homicide, and what not?

#### CHAP. CXLVII. V. 95.

*Non compos mentis.*

**I**F one that is *Non compos mentis*, or an Ideot kill a Man; this is no Felony, for they have not knowledge of good and evil, nor can have a Felonious intent, nor a will or mind to do harm: And no Felony or Murder can be committed without a Felonious intent and purpose; for it is called *Felonia, quia fieri debet felleo animo. Co. 4. 144.* Fitz. N.B. 202. 11 H. 7. 31 Flo. 19. Co. 4. 134

And again, *Actus non facit reum, nisi mens sit rea*; and a Mad-man is *Ament, id est, sine mente*, without his mind or discretion, and is only, and enough punished by his madness, *Co. L. 247.*

So it is, if a Lunatick person killeth another during his Lunacy, it is no Felony, (*Flo. 260.*) For all acts done by him in his Lunacy, are as the acts of an Ideot, *Co. 4. 125.* Hobbs 134

*Uncore tiels persons serra puny in Trespas, pur hurt fait al corps d'auter.*

If another Man shall upon malice procure a Madman to kill another, though the Madman shall be excused; yet the inciter or procurer shall be punished as a principal. *Ba. 57. Vide hic cap. 108.*

Now there be three sorts of Persons accounted *Non compos mentis*, to this purpose, and the like.

1. A fool natural, who is so (*a nativitate*) from his birth; and in such a one there is no hope of recovery.

2. He who was once of good and sound memory, and after (by sickness, hurt, or other accident, or visitation of God) loseth his memory. Co. 124

3. A Lunatick, *Qui gaudet lucidis intervallis*, and sometimes is of good understanding and memory, and sometimes is *Non compos mentis*.

*Infant.*

An Infant of eight years of age, or above, may commit Homicide, and shall be hanged for it, *viz.* if it may appear (by hiding of the person slain, by excusing it, or by any other act) that he had knowledge of good and evil, and of the peril and danger of that offence. See 3 H. 7. 1. & 12. *Stamf. 27. Fitz. Coron. 118. 129. & Br. Coron. 133, 136.*

And yet Sir Edw. Coke upon Littleton, f. 147. saith, That it is of an Infant, until he be of the age of fourteen years (which in Law is accounted the age of discretion) as it is with a Man *Non compos mentis*; and that in Criminal

Criminal Causes (as Felony, &c.) his act and wrong shall not be imputed to him, for that *Actus non facit reum, nisi mens sit rea*, &c. Sir Fr. Bacon 38. accordeth.

But an Infant of such tender years, as that he hath no discretion or intelligence, if he kill a Man, that is not Felony in him. 3 H.7. 1. b.

Flow. 19. If one that is dumb killeth a Man, it is Felony; yet *quare*, how he shall be arraigned.

F. Coro. 197. A Man born deaf and dumb, killeth another, that is no Felony; for he cannot know, whether he did evil, or no; neither can he have a felonious intent, &c. See hereof, *tit. Surety for the Peace, antea*. Otherwise, if he were not so born, but becometh so afterwards. See Br. Coron. 101. & 217. 'That a Man which can neither hear nor speak, may commit Felony, and shall be imprisoned, &c.

Yet note, in these former Cases of Homicide, committed by Persons being *Non compos mentis*, or wanting discretion, such things happen by an involuntary ignorance; and therefore the Law accounteth such act of theirs to be no Felony.

Flow. 19. But if a Man that is drunk, killeth another, that is Felony of Death; for it is a voluntary ignorance in him, in as much as such ignorance cometh to him by his own act and folly. Sir Edw. Coke L. 247. calleth a Drunkard, *Voluntarius Dæmon*, and saith, That such a one hath no priviledge thereby, but what hurt or ill soever he doth, his drunkenness doth aggravate it.

### Misadventure or Case. CHAP. CXLVIII. v. 96.

BY the Statute of *Marl. cap. 25.* killing a Man by Misfortune or Misadventure only, shall not be adjudged Murder. §. 1.

'Misadventure, in a general signification, is where a Man is killed partly by negligence, and partly by chance, and against the mind of the killer; and when the killers ignorance or negligence is joyned with the chance: Or Homicide by Misadventure or Misfortune more legally, is when any person doing a lawful thing, without any evil intent, hapneth to kill a Man casually; by the Law of God there was a City of Refuge appointed for such person to flee unto, *Numb. 35: 15. & 22. Josh. 20. 3.* for such an act happening in such sort, seemeth to be the Work of God himself. See *Prov. 16. 33. & Exod. 21. 13.* And by our Law now, this is no Felony of Death, neither shall there be any Judgment of Death given upon him; but he shall have his Pardon of Course, for his Life and his Lands; yet he shall forfeit his Goods, in regard that a Subject is killed by his means. See *Stamf. 16. a. b. Fitz. Coron. 69, 302. & 354. Br. Forf. 9. & Co. 5. 91. b.*

See Exod. 21. 20, 21. Stamf. 12. As if a School-master in reasonable manner beating his Scholar, for correction only, or a Man correcting his Child, or Servant, in reasonable manner; and the Scholar, Child, or Servant happen to die thereof; this is Homicide by Misadventure, *Cro. 136. Bract. 121.*

So if a Man shooting at Butts, Pricks, or other lawful Mark, and by the shaking of his hand, or otherwise against his will, he killeth one that standeth or passeth by, 21 Hen. 7. 29. Rede. 6 Edw. 4. 7. Br. Coron. 59. & 148.

So if a Carpenter, Mason, or other person doth throw, or let fall a Stone, Tyle, or Piece of Timber from an House, or Wood, or other thing

from a Cart, &c. (and giveth warning thereof) and another is killed thereby against his will, 21 H. 7. Coron. 59. Br. 121.

So if a Laborer that is felling, or cropping a Tree, and the same, or part thereof, falleth and killeth a Man.

So if the Head of his Hatchet, or other Tool falleth from him, and happeneth to kill one standing by, Dent. 19. 5, 6. & 10. accordeth, *sc.* That he is not worthy of death, but innocent.

So if a Man be (in due and convenient time) doing any other lawful thing, that may breed danger to such as pass by, and shall give warning thereof, so that such as pass by, may hear and flee the peril, and yet another passing that way shall be killed therewith.

And so if Men shall run at Tilt, Just, or fight at Barriers together by the Kings Commandment, and one of them doth kill another: In these former Cases, and the like, it is Misadventure, and no Felony of Death.

And yet in such Cases of Misadventure, as also where one killeth another *se Defendendo*, by the Common Law, these offences were Felony of Death, and the offender should have died for the same; but now by the Statute, such offenders are to have Pardon for their Life and Lands, yet their Goods remain forfeit as before (at the Common Law.) See these Statutes, 6 Ed. 1. c. 9. & 2 Ed. 3. c. 2. 21 Ed. 3. fol. 17. Br. Cor. 40. & Forf. 9, 13, 15.

Also in these Cases of Misadventure, and in the former Cases of Homicide committed by Infants, and other Persons, being *Non compos mentis*, as also where one killeth another in defence of his person; they shall be discharged in this manner, *sc.* If they desire to purchase their pardon, they must upon their Tryal, plead *Not Guilty* (and shall give in Evidence the special Matter) and then this special Matter being found by Verdict, they shall be bailed, and then they must sue forth a *Certiorari*, to have this Record certified to the Lord Chancellor of England, who thereupon shall make them a Charter or Pardon of Course under the Great Seal, without speaking of suing to the King for it. See *Stamf.* 15.

But if a Man be doing of an unlawful act, though without any evil intent, and he hapneth by chance to kill a Man; this is Felony, *viz.* Man-slaughter at the least, if not Murder, in regard the thing he was doing, was unlawful. *Finch, fol. 75.*

As shooting of Arrows, or casting of Stones into an High-way, or other place, whither Men do usually resort.

So of fighting at Barriers, or running at Tilt or Justs, without the Kings commandment, whereby a Man is slain; and although it were by the Kings commandment, yet it was holden Felony by the Justices, *tempore H. 8.*

*Hob. p. 134. contra.*

Playing at Hand-Sword, Bucklers, Footbal, Wrestling, and the like, whereby one of them receiveth a hurt, and dieth thereof within a year and a day. In these Cases, some are of opinion, that this is Felony of Death; some others are of opinion, that this is no Felony of Death, but that they shall have their pardon of Course, as for Misadventure, for that such their play was by consent: And again, there was no former intent to do hurt, or any former malice, but done only for Disport, and Tryal of Manhood.

A Man casting a Stone at a Bird, or Beast, and another Man passing by, is slain therewith, *quare*, whether this be Man-slaughter, or but Misadventure. The opinion of *Finewx*, Chief Justice in 11 H. 7. fol. 23. is, That if a Man cast a Stone over a House, and killeth a Man, this is no Felony, but Misadventure. But Mr. *Brook* abridging this Case, saith, It seemeth to be



be no Law, but where the casting of a Stone is lawful, as where a Mason is untyling of a House, &c. but to cast it for pleasure, and not in lawful labor, seemeth to be Felony: And so was the opinion of Mr. Braddon, lib. 3. fol. 120 & 121. And Mr. Stamford, especially if the casting of the Stone be in such place where Men do use to pass by. Yet Mr. Braddon, lib. 3. cap. 17. *De homicidio per infortunium & casualiter*, giveth these Rules, *Crimen non contrahitur nisi voluntas nocendi intercedat, & voluntas & propositum distinguunt malefictum, secundum quod dict poterit de infante & furioso, cum alterum innocentia consilii tueatur, & alterum facti imbecillitas excuset.* Again, *In maleficiis spectatur voluntas non exitus, & nihil interfit, occidat quis, an causam mortis præbeat.*

## Casual Death. CHAP. CXLIX. v. 97.

Also a Man may be slain by other casualty, then by hands or means of another Man: As by the fall of a House, Pit, or Tree, &c. upon him; or be killed by a Bull, Bear, or other Beast, or by a Horse, or Cart, &c. or be killed by some fall, which he himself taketh.

And in these and the like Cases, observe these Rules.

1. First, if a Man be slain in any such manner, yet if it be by the means or procurement, or wilful default of another Man. This shall be Felony in the party procuring or causing it.

2. The thing which is the cause of such casual death, shall be forfeit to the King, praised, and taken for a *Deodand*, and the price of the thing shall be distributed in Alms to the Poor, by the Kings Almoner, for *Deodand, est quasi Deodandum, id est, in Eleemosynas erogandum.* But the Almoner hath no interest, as it seemeth, in such Goods, but hath only the disposition of the Kings Alms, *Durante Beneplacito*; so that the King may grant them to any other. See Co. 1. 50. Dyer 77.

The Office and Duty of this Almoner. See Co. 194.

3. The Forfeiture shall have relation from the stroke given; so as the Party or Owner selling thereof (sc. of such thing as was cause of such death) after the stroke given, taketh not away the Kings Right, but that he shall have it as forfeited, notwithstanding such Sale.

4: *Deodands* are not forfeited, until the matter be found of Record, and therefore they cannot be claimed by Prescription.

5. The Jury which find the Death of the Man, must also find and appraise the *Deodand*, and the Sheriff shall be charged with the price of such *Deodand*, and shall levy the same of the Town where it falleth, although it were not committed to the Town to keep; and therefore it becometh the Town to see it forth-coming. See the *Stat. de officio Coronatoris*, 4 Ed. 1.

6. If he that is so slain be under fourteen years of age, nothing shall be forfeit to the King as a *Deodand* for him, as it seemeth.

If a Man dieth suddenly, or by misfortune, Mr. Braddon, lib. 3. saith, *Tunc attachiare debeat inventorem usque ad adventum justiciariorum, & similiter omnes illos qui in societate illa interfuerint ubi tale accidit infortunium,* fol. 122.

And if a Man that is unknown be found dead in the Field, his Apparel and Money about him, shall be given to the Poor, &c. And if he were known, then his Goods shall be delivered to his Executors or Administrators, or to the Ordinary; but shall not be taken as a *Deodand*, in

either case (for they are not of the nature of a *Deodand*) they being no cause of his death.

*Deodand, quid.* Next what shall be forfeited and taken for a *Deodand*: The old Rule <sup>Dyer 77. Co. 5. 116.</sup> is, *Omnia que moventur ad mortem, sunt Deodanda*; and yet besides *Deodands* may be of some things that a Man shall move or fall from, though the thing itself moves not: As to fall from a Ship, Cart, Mow of Corn or Hay, &c. So as *Deodands* are any Goods which do cause, or are occasion of the death of a Man by Misadventure, *Co. ibid.* See more *Fitz. Cor.* 314, 326, 341, 342, 344, 388, 389, 398, 401, 409.

If a Man killeth another with my Sword (or other Weapon of mine) <sup>Br. Forc. 112.</sup> my Weapon shall be forfeit, as a *Deodand*; for it shall be adjudged my fault, that I did not keep my Weapon from him, *Doct. & St. fol.* 156. b.

If I shall lend another Man my Sword, or other Weapon, knowing him to be minded to go fight, or make an affray therewith, and he with my Weapon in such fight or affray, killeth one, *quare*, if this be not Felony in me: For you shall find that an Abbot that lent a Bow and Arrows to another, to the intent to kill the Kings Deer, was therefore fined and ransomed. *Crompt. Author des Courts, fol.* 191.

The Inquiry of such casual death, belongeth also to the Coroner: But if the Coroner cannot have the sight of the Body, and so cannot inquire thereof, *quare*, how the King shall be intituled to the Goods. *Vide hic postea.*

The Office of Coroner in such Cases. See *Brañ. lib.* 3. & *Crompt.* 226.

### Homicide upon Necessity. CHAP. CL. V. 98.

§. 1.  
*Justice*  
*command-*  
*ed.*  
*Justice.*

SOMETIME the Justice of Law commandeth a Man to be put to death. As when the Judge hath pronounced Sentence of Death against an offender (attainted by due course of Law) there (in due execution of Justice) an Officer, or other person thereto lawfully deputed, may orderly execute such Judgment or Sentence according to his Warrant; and such Sentence or Judgment pronounced by the Judge, and after lawfully executed by the Officer, leaveth the name and nature of Murder or Homicide, and is called Justice, or rather Judgment, which is the lawful execution of Justice.

*Istud autem homicidium, si sit ex livore, vel delectatione effundendi humani sanguinem, licet iuste occidatur iste, tamen peccat mortaliter propter intentionem corruptam.* *Brañ.* 120.

But if the Officer, or other person, shall proceed therein upon his own Authority, without Warrant, or *Non observato ordine juris*; as where an offender hath Judgment given upon him to be hanged, if the Sheriff or other Officer, &c. shall behead him, or by other means put him to death. This is Felony in such Officer, &c. *Co.* 7. 14. <sup>Stamf. 13. See Doct. & Stud. fol. 133.</sup>

Also if a Stranger being not thereto lawfully deputed, shall (upon his own Authority) put to death an offender that is condemned to die. This is Felony. See *Co.* 7. 14. a. <sup>Stamf. 15.</sup>

Nay, if the Judge himself, who gave the Judgment of death upon an offender, shall after put the same offender to death, it is not justifiable by him.

If the Justices of Peace shall arraign a Man of Treason before them at their Sessions, who is found guilty, &c. and thereupon is hanged: This is

is Felony, as well in the Justices, as in the Sheriff, or Officer which shall hang him: For that the Justices of Peace had no Authority therein, but it was *Coram non Judice*. *Lecture, M. Cook*. See also *Co. 10. fol. 76*.

If the Justices of Peace shall arraign a Man of Felony, upon an Indictment of Trespas, whereupon he is hanged. This is Felony in the Justices, but not in the Sheriff or Officer. *Lecture, M. Cook*. The difference between these two Cases, appeareth in my *Lord Cooks Reports, lib. 10. f. 76. sc.* For that in this last case, the Justices of Peace had Jurisdiction of the Cause; and therefore, although they proceeded *inverso ordine*, or erroneously, yet the Officer is excusable.

Sometimes also the Justice of the Law tolerateth and suffereth a Man to be slain, *sc.* for the necessary execution and advancement of Justice, which otherwise should be left undone: And in such case, the Law of the Land imputeth not it as any fault to him that shall so kill a Man, but freely dischargeth him thereof, without the Kings Pardon. *Tolerateth.*

*F. Cor. 162*  
*Stamf. 13.* As a Sheriff, Bailiff, or any other Person who hath a lawful Warrant to Arrest a Man indicted of Felony, may well justifie the killing of him; if he will not suffer himself to be arrested, and yield himself, and that they cannot otherwise take him. See *22 Aff. 55. & Fitz. Cor. 288. & 328.*

*F. Cor. 363*  
*Stamf. 13.* And so every person whatsoever, without any Warrant, may apprehend a Felon upon Hue and Cry, or otherwise: And if he will not yield to be arrested, but shall resist or flie, the pursuer may kill him without blame. See *Fitz. Coron. 328. & Co. 5. 109. b.*

Herewith also agreeth the *Doctor and Student, lib. 2. cap. 41.* saying, If any person that is no Officer would arrest a Man that is Outlawed, Abjured, or Attainted of Murder, or any other Felony, and such offender shall disobey the arrest, and by reason of that disobedience he is slain, the other shall not be impeached for his death; for it is lawful unto every Man to arrest and take such persons, and to bring them forth, that they may be ordered according to the Law.

*F. Cor. 188*  
*& 328.* An offender in Felony is led towards the Gaol, and breaketh away from those that conduct him, and maketh resistance, or flieth; his Conductors may justifie to kill him, if they cannot otherwise take him again.

*22 Aff. 35* A Prisoner in the Gaol attempteth to escape, and having broken his Irons, striketh the Gaoler (coming in the night to see his Prisoners) and the Gaoler slayeth such a Prisoner. This is no Felony.

*Cro. 24. 61*  
*30 & 158.* Riotors, and such as shall make any Forceable Entry, or Detainer, against the Statutes, if they shall resist the Justices of Peace, or other the Kings Officer, or shall not yield themselves, but shall stand at their defence, when the Justices of Peace, or other Officer, shall come to arrest or remove them, if any of them happen to be slain. This is no Felony in the Justice of Peace, or Officer, or in any of their Company that killeth such Riotors, *&c. Lamb. 310.*

*Stam. pro-*  
*rog. 101. 46.*  
*Cro. 14. 30.*  
*Doct. & St.*  
*139. b.*  
*Stamf. 13.*  
*5, 6, 8.* The Sheriff, Bailiff, or other Officer cometh (by vertue of the Kings Process) to arrest another for Debt, or Trespas, who maketh resistance, and thereupon is slain by such Officer, or any of his Company; this hath been taken to be no Felony, *tamen quere*, what the Law is at this day: For although the Sheriff (being the Kings Officer) ought to see the Kings Commandment to be executed, yet that must be understood to be executed by all lawful means and ways.

But in all these former Cases, there must be an inevitable necessity; *sc.* That the offender could not be taken, *&c.* without killing of him.

Also



§. 4.  
Se defen-  
dendo tol-  
erated.

Also in an Appeal of Felony, if the Appellant and Appellee do joyn to try it by Battle, and therein one doth kill the other; as the Law doth allow such trial; so doth it allow the event to be justifiable, as depending upon the Judgment of God, who giveth Victory according to Truth. 37 H. 6. 21.

So a Man as a Champion in trial upon a Writ of Right, if he killeth the other. This is no Felony, *Pl. 9. b.*

"If two Men Tilt or Turney in the presence of the King, or if two Masters of Defence, playing their prizes, kill one another; it is not Felony. Hob. 134.

§. 5.  
Necessity.

'Necessity of three sorts, *sc.*

1. Of conservation of life, &c.

2. Of obedience, as where the Wife stealeth with her Husband.

3. Of the act of God, or of a stranger.

'Yet in these Cases, Necessity priviledgeth in cases of Homicide only when it is inevitable. *Bracton.*

And in Cases of Theft only *Quoad jura Privata, sed non valet contra Rempublicam. Ba. 32.*

Also when one Man killeth another in the necessary defence of himself, or his, thereby to deliver himself, his Possessions, or his Goods, or some other persons, which he is bound to defend from peril, and which cannot otherwise escape. This is Homicide tolerated upon necessity.

§. 6.  
For defence  
of Person,  
House, or  
Goods.

'And here the Sword is (as one saith) a Weapon of defence to keep off violence, and the use of it made lawful by the Law of Nature, *Vim vi, &c.* Yet *cum moderamine inculpatæ tutelæ, & pro hac vice tantum.*

To kill an offender, which shall attempt Feloniously to murder or rob me in my Dwelling-house, or in or near any High-way, Cart-way, Horse-way, or Foot-way, or that shall attempt Burglary, or Feloniously to break my Dwelling-house in the night: This is justifiable by my self, or by any of my Servants, or Company, whom the said evil doers shall so attempt to rob or murder; or by any person being in my Dwelling-house, which the same evil doers shall attempt so to break by night. 24 H. 8. 1.  
P. For. 1.  
24 P. 8. 6.  
H. 5. P.  
For. 1.  
Hob. p. 96  
Cor. 5. 15  
& 11. 18.  
Exod. 21.

And this being so found by Verdict upon Trial, we shall be all discharged without loss of Life, Land, or Goods, or Pardon. *24 H. 8. cap. 5. Stamf. de Prærog. 46.*

To kill a Thief or Murderer, (*sc.* one which goeth about to Rob, or Murder me) in the defence of my Person, my House or Goods, was no Felony, but justifiable by the Common Law, before the Statute of *24 H. 8. cap. 5.* (which Statute doth also declare the Law to be so, and doth enact it) *Stamf. 14.* See *Co. 5. 91. & 11. 82. Br. Coron. 100. 102.* And yet at the Common Law there was this difference, *sc.* That he which killed a Thief which would have robbed him upon the High-way, should forfeit Goods; but he which killed one who would have robbed or murdered him in his House, should forfeit nothing. *Co. 11. 82. See Exod. cap. 22, 23.* 26 Aff. 12.  
1. Cor.  
261, 304  
& 330.

And if one or more come to burn my House, I, or any of my Servants may justifie to shoot forth of my House at them, or may issue forth, and kill them; for such intent of theirs is Felonious. *Br. Coron. 100.* 20 Aff. 23.  
Finch.

If a Woman kill him that assaileth her to ravish her: This is justifiable by the Woman, without any Pardon. *Sir Fr. Ba. 34.*

'And in these Cases, *se Defendendo* is a Plea for him, or her that is charged with the death of another, saying, That they were driven to

to that they did, in their own defence, the other so assaulting them,  
&c.

‘ If divers be in danger of Drowning, by the casting away of a Boat or Barge, and one of them gets to a Plank, or on the Boats side, to keep himself above the Water, and another to save his life, thrust him from it, whereby he is drowned. This is neither *Se Defendendo*, nor by Misadventure, yet justifiable. *Idem* 30.

\* And for this inevitable necessity *Bracton* giveth this Rule, *si autem inevitabilis, quia occidit hominem sine odii meditatione, in metu & dolore animi se & sua liberando, cum aliter evadere non possit, non tenetur ad poenam homicidii*, f. 120.

but "If a Man imprisoned for Felony escape, and the Gaoler pursues him, but he resisteth and refuseth to yield himself, and thereby the Gaoler kills him; this is justifiable and not Man-slaughter. But otherwise it is in case the Imprisonment were for Debt. Per *Rolls Rep. part. 2. p. 187.*"

But if a Man shall forceably get, and keep possession of a House, and the other shall come in the night and fire this House, they within cannot justifie to shoot and kill him, or any of his company, for that they in the House were there unlawfully. See *Cromp.* 26.

§. 7.  
Prohibited.

If one cometh (in the day time) to my House, to beat me, and doth make an assault upon me in my House, and fighteth with me, and I kill him in defence of my person; yet in this case I shall forfeit my Goods, and must have the Kings pardon, except it be found, that the Assailant came with a Felonious intent to kill or rob me.

And if one cometh (in the day time, or in the night) to enter into my House, pretending title thereto, and to put me out of my Possession, and I kill him: This seemeth to be Man-slaughter in me.

Note, if one kill a true Man, in defence of his person, there ought to be so great a necessity, that it must be esteemed to be inevitable; or otherwise it will not excuse, but that it is Felony, although that the other pursues him; and therefore he that shall be assaulted by a true Man, must first flee as far as he can, and till he be letted by some Wall, Hedge, Ditch, press of People, or other Impediment; so as he can flee no further without danger of his life, or of being wounded or maimed; and yet in such case, if he kill the other, he shall be committed till the time of his tryal, and must then get his pardon for his Life and his Lands, (which pardon notwithstanding he shall have of course) but he shall lose and forfeit his Goods and Chattels; for the great regard which the Law hath of a Mans *The Penal-* life, *Fitz. Coron. 116. Co. 5. 91. b.* See hereof *Paulo antea, tit. Felony by* *Misadventure.*

*A.* maketh an affray upon *B.* and striketh *B.* and *B.* flieth so far as he can for saving his life, before any stroke given by *B.* and *A.* continueth his assault; whereupon *B.* doth also strike *A.* and killeth him. This is Homicide in his own defence; otherwise it seemeth to some, if *B.* had striken the first blow, or had striken before he had fled; and yet by other good opinions, the first stroke, or who began the affray, is not material; but the whole matter will consist upon the inevitable necessity (*sc.* whether the said *B.* who killeth *A.* could not have escaped with his life, &c. without killing *A.* for otherwise it will not excuse *B.* for *Cuncta prima tentanda*: And as it is a charitable, so it is a safe principle (in these cases) not to use an extremity, till thou hast tryed all means.

g. 8.  
Se Defen-  
dendo.

Also it is holden in the former case, if *B.* (before he had fled) had stricken *A.* and given him divers wounds, that yet if he fle to a streight before

F. Cor.

305  
Co. 5. 91.

Stamf. 15

**Speculum  
Iustic.**

Co. 91.

4 H. 7. 2.

6 E.1. C.9

**P. Pardon**

I.  
Scams

Stamp. 19

F.Cor.28

8286.

Stamps. 15

fore he give *A.* the mortal wound, and then he giveth his death's wound; this is Homicide in his own defence.

But in the former case, if *B.* upon malice premeditated had first stricken *A.* and then *B.* flieth to a streight or wall, and *A.* pursueth him, and striketh him, and *B.* killeth *A.* thereupon. This is Murder in *B.* for the malice premeditated was the ground and beginner hereof. F. Cor. 387  
Crompt. 23  
28.

Yet if there had been former malice between *A.* and *B.* and they meet suddenly, and *A.* assaulteth *B.* and *B.* before any stroke by him given, flieth so far as he can; and *A.* pursueth him, and then *B.* killeth *A.* This seemeth to be Homicide in his own defence, notwithstanding the former malice.

*Copstone's Case*: There was malice between *Copstone* and one *S.* and they had fought divers times, and after met suddenly in *London-street*, and *C.* told *S.* that he would fight with him, and *S.* answered, that he had nothing to say unto him; and *S.* went to the Wall, and after *C.* assaulted *S.* and then *S.* struck and killed *C.*; and it was found that *C.* began the affray, and *S.* was thereupon discharged, without forfeiting any thing. But that was by force of the Statute of 24 H. 8. c. 5. 15 El.  
Crompt. 27

A Man in fight falleth to the ground, there his flying, &c. is not necessary, &c. See hereof before.

Also if a Thief assaults me to rob or kill me, I am not bound to flee to a Wall, &c. as I must in case a true Man assaults me. Stamf. 14

If an Officer of Justice, or Minister of the Law, in the execution of his Office, be assaulted, he is not bound to flee to a Wall, &c. as other Subjects are. Co. 9. 98.

Also the Servant may justify the killing of another, in defence of his Masters Person or House, if the hurt cannot be otherwise avoided, *Br. Coron. 63.*

Also the Servant may justify the killing of him, who robbed and killed his Master, so that it be done presently. 21 H. 4. 39

In the defence of the possession of my Goods, I may justify to beat him that shall wrongfully take them from me; but I cannot justify to kill him, except he be a Thief.

So then, to kill a true Man in defence of my person, in case where there is an inevitable necessity, (*sc.* that I first shall flee so far as I can for saving my life, &c.) This is no Felony of death, &c. But otherwise it is to kill a true Man in defence of the possession of my House, Lands, or Goods, that is Man-slaughter (at least) as it seemeth. 23 Ed. 1.  
P. Forests  
4.  
Stamf. 13,  
14.

"In case of killing a Man *se Defendendo*, there must be *extrema necessitas*; for if a Man flying see a place, beyond which he cannot go, and before he come there, kill his prisoner. This is not justifiable, for he must go to the utmost place before he strike. Hob. 159.

"Sir Francis Bacon taketh this difference in these former Cases of *se Defendendo*, *sc.* When the Law doth intend some fault or wrong in the party that hath brought himself in the necessity: This he calleth *Necessitas culpabilis*, and saith this to be the chief reason why *se ipsum defendendo* is not matter of Justification, but he must sue out his Pardon, and shall forfeit his Goods, because the Law intends it hath a beginning upon an unlawful cause; for Quarrels are not presumed to grow without some wrongs in words or deeds, and so malice on either part; and it is hardly triable in whose default the quarrel began: But where I kill a Thief that assaults to rob me (and the like) and I kill him, here there can be no malice or wrong presumed on my part.

"*Br. 33.*



Cromp. 30

If any Forester, Park-keeper, or Warrener, or any in their company, shall kill an offender in their Forest, Park or Warren, which (after Hue and Cry levied to keep the Peace, and to obey the Law) will not yield themselves, but will flee, or defend themselves by violence; this is no Felony: Yet *quare*, if there were any former malice, in such Keeper. But if any such Keeper by reason of any former malice, will lay to any Mans charge, that he came to do hurt, whereas he did not, neither was found wandering nor offending, and so kill him; this is Felony in such Keeper.

And so in the former Cases, where a Man is slain for the execution of Justice, *sc.* when the offender shall disobey the Arrest, resisteth, or flieth, and so is slain: As also where any Man shall be slain by an Officer, or other person, in keeping or preserving the Peace; yet if such Man-slaughter, or killing of such an offender, be committed wittingly, willingly, and of purpose, under colour of execution of Justice, or keeping of the Peace; this is Felony. See the Statute of 1 Jac. c. 8.

## Burglary. CHAP. CLI. V. 99.

In E. 9.  
18 El. 6.

**B**urglary is composed of two French words, *Burg* (a Village or a Farm-house,) and *Larron* (a Thief;) and so in the natural signification, is nothing but the robbing of a House: But in our Law it is taken to be, when one or more in the night time, do break or enter into anothers dwelling-house feloniously, wherein some person is, or a Church, or the Walls or Gates of a City, or Walled Town, with an intent to rob, or to do any other Felony, although he or they do not execute the same, or do take or carry away nothing; yet it is Felony of Death, and the offenders shall not have the benefit of their Clergy. *Dyer* 99. *Stamf.* 30. *Fitz. Coron.* 185. 264.

§. 1.  
Definition

And if the intent or fact of this offender be to steal; this is like Robbery. If to Murther, it differeth not much from Murther; and so of other Felonies. *West.*

Br. Cor.  
185.  
Stamf. 130  
Co. 11. 36.  
21 H. 7.  
See the i-  
de Watch.

First for the time: Burglary cannot be committed in the day time, but only in the night; for all Indictments of Burglary be, *Quod noctanter fregit*: And the night (to this purpose) beginneth at the Sun-setting, and continueth to the Sun-rising: And therefore to break a house, &c. after the Sun-setting, and before it be dark; or after day light in Summer, and before the Sun riseth, is Burglary.

§. 2.  
The timeStamf. 30.  
Dyer 99.  
Br. Cor.  
106.

Next, for the manner: It is holden (by some good opinions) That if a Man break the House to do Felony, and yet entreth not, it is no Burglary; and that the Indictment must be, *Fregit & intravit*. And yet by the opinion of *Shard.* 27 *Aff.* 38. And by the opinions of Sir *Anth. Brown*, Sir *Edw. Montague*, and Sir *Rob. Brook*, late Chief Justices of the Common Pleas, and others, (as Mr. *Crompton* reporteth) if a Man do but attempt or enterprise to break or enter into a dwelling House by night, to the intent to rob, or kill any person there, though he make no actual Entry, yet it is a full and compleat Burglary: For in such Cases *Voluntas reputabitur pro facto*.

§. 3.  
The man-  
ner.Crom. 11.  
31. 33.

As to put back the Leaf of a Window with his Dagger.

To draw the Latch of the Door.

To turn but the Key, being on the inner side of the Door.

And. part  
L. p. 114.

So to break the Glass-window, and to draw out any Goods there with an Hook, &c. 26 El. at *Staff. Assizes*.

So to break a hole in the Wall, and to shoot in thereby at any within the House. *Auderf. part 1. p. 114.*

So (the Door being opened by some of the House) if any the attempters shall discharge a Dagge against any in the House, and in discharging his Dagge, shall hold his hand over the threshold, though he set no foot over. *26 Eliz. 1. p. 114.*

"But if Thieves come to a House, and some within open the Door, and one of the Thieves shoot at the Man, and miss him, and the Bullet break the Wall of the House. This is not Burglary. *And. part 1. p. 114.*

"Or, if they make a hole in the Wall, and perceive a Man to come by with a Purse, or any thing else in his hand, and snatch it away: This is Burglary. *And. part 1. p. 114.* So one came to a Gentlemans Window, and saw a Cabinet with Money in it, and pulling it to him, took out the Money, he was executed for it.

So if upon an attempt of Burglary, they within the house shall cast out their Money for fear, and the attempters take it away.

And yet there is no Actual Entry made, in any of these Cafes.

But if a Thief setteth but his Foot over the Threshold, or into any part of the House, to commit Felony, or shall for that purpose but put his hand in at the Window, or at any hole in the Wall; this much more shall convict him of Burglary.

Also one being let down the Chimney in the night, to commit Felony, it was adjudged Burglary by Sir R. Manwood, Chief Baron, and yet he broke not the House. *Cromp. 34.*

So it is to come into the House by the help of a Key.

So if suddenly one come into the House by night, the Doors being open, and the owner flieth to his Chamber, and the offender is taken shoving at the Chamber door.

So is it, if Thieves pretending that they be robbed, &c. shall come to the Constable, and pray him to make search for the Felons, and going with the Constable into a Mans House to search, they rob the good Man of the House. This is Burglary.

So if a Servant conspiring with another to rob his Master, shall open his Masters Door or Window in the night, and the other entereth thereat; this is Burglary in the Stranger, by the opinion of Sir Roger Manwood; and the Servant is but a Thief, and no Burglar. *21 Eliz. Termes 34.*

And yet the House was not broken in any of these Cafes.

If a Thief find the Door open, and cometh in by night, and robs the House, and be taken with the manner, and breaks a Door to escape; this is Burglary: Yet the breaking of the Door was without any Felonious intent, but it is one intire act. *Sir Fr. Ba. 65.*

If a Man in the night entereth into the House by a hole, or at a Wall broken before, and taketh away any thing, or to the intent to do any Felony, it is Burglary.

But if one cometh into my House in the day, and there hideth himself till night, and then robbeth me; or if I shall lodge one in my house, and in the night he robbeth me (*sc.* goeth out of my house, and taketh away some of my Goods with him,) yet this is no Burglary, for that he broke not my House. For the first Case it was so holden at *Derby, Ass. 32. El. Cromp. 34.* See *hic postea.* Quere of his opening the Door to go out and escape, if that shall not make it Burglary.

Also if divers come to commit Burglary, and but one of them entereth, and commit it, the rest standing about the House, or not far off, to watch that no help shall come: This is Burglary in all that Company. *11 H. 4. 13.*

But

But Mr. Finch (*lib. 2.*) describeth Burglary to be the breaking and entry of a house in the night, with a felonious intent to kill or steal, although no Man be killed, nor any thing stoln.

Now concerning the place, it may be either publick or private; publick, as the Church or Walls, or Gates of a City, or Walled Town; private, <sup>§. 4.</sup> as a Dwelling-house: And here commonly it is no Burglary, unless some person be at that time within the house. *The Place.*

And. part.  
1. p. 302.

And yet *An. 36 El. Termino Pasch.* at an Assembly of all the Justices at *Serjeants-Inn*, it was resolved, That the breaking of an House in the night, with an intent to commit Felony, is Burglary, although that no person be within the House; for the Law is, That every Man ought to be in security or safety in the night, as well for their Goods, as for their Person; and that the ancient Presidents are, *Quod domum noctanter felonice & burg. fregit*, without saying *Domum mansionale*, or that any person was in the House; and that the reason why of late times these words have been put into the Indictment (*sc.* that some person was in the House) was, for that in such cases the benefit of Clergy was taken away: But now by the Statute 18 *Eliz. 6.* Clergy is taken away in all cases of Burglary; and therefore the Judges then all agreed from thenceforth to put the same in execution accordingly. I have seen this thus reported out of a Book of *Pophams*, late Lord Chief Justice of the *Kings Bench*.

Co. 4. 40.

And if a Man hath a Dwelling-house, and he and all his Family (upon some occasion) are part of the night out of the house, and in the mean time one cometh and breaketh the house to commit Felony; this is Burglary.

Ibid.

So if a Man hath two Dwelling-houses, and sometimes dwelleth in the one, and sometimes at the other, and hath a Family of Servants in both; and in the night, when his Servants are out of the house, the house is broken by Thieves; this is Burglary. Adjudged 38 *Eliz.*

I have also seen a report of Judge *Pophams*, that *Termino Trin. 36 Eliz.* it was resolved by the Judges, that if a Man had two houses, and dwelt sometimes in one, and sometimes in the other; if that house wherein he neither then was, nor had any Servants, were broken, &c. That this was Burglary, although no person then dwelt or were therein.

Crompt. 33

If one breaketh a Chamber in *Lincolns-Inn*, (or in any other House of Court or *Chancery*, or in any Colledge in *Cambridge* or *Oxford*, &c.) in the night, to the intent to commit Felony there, this is Burglary, although there were no person in the same Chamber: For the Colledges and Houses of Court and *Chancery* be intire Houses, whereof such Chamber is parcel; so that if any person shall be in any other Chamber within the same House or Colledge at the same time, it is Burglary.

One P. was arraigned of Burglary, 22 *Eliz.* for that he assaulted one of his Companions of the *Inner-Temple, London*, in his Chamber, there to have killed him in the Evening, &c. But had his pardon.

Crompt. 32  
2 E. 6.

A Servant who lieth continually within his Masters house, openeth the doors of his Masters house in the night to rob him; this is Burglary, *Letf. Mr. Cook; tempore H. 8. See hic antea.*

A Man cometh as a guest to eat and drink in the day time, and there stayeth till night, and in the night time breaketh his Chamber, or any part of the house to rob his Host; this is Burglary. *Ibid.*

A guest cometh to a common Inn, &c. and the host appointeth him his Chamber, and in the night the host breaketh into his guests Chamber to rob him; this is Burglary. *Ibid.*



Also the breaking (in the night) of a Stable, Barn, or other Out-house adjoining to, or parcel of, or near to the Dwelling-house, to the intent to steal, is Burglary, though he take nothing. *Fi. lib. 2.* Br. Cor. 180. Lamb. 256

At Summer Assizes at Cambridge, *An. Dom. 1616.* two Men were arraigned and condemned for Burglary before Sir James Altham Knight, for robbing a Back-house of Robert Castle Esquire, in the night; which Back-house was some eight or nine yards distant from his Dwelling-house, and only a pale reaching between them: So that although this offence be not committed in the very Body of the Dwelling-house, but in some other house near unto it, and being parcel of or belonging to the Dwelling-house, it is Burglary. Co. 11. 37.

But a Booth or Tent in a Fair or Market, are not esteemed in Law for a Dwelling-house, nor the breaking thereof in the night time to be Burglary; although the robbing of them be made as penal as Burglary, if the owner, his Wife, Children, or Servants, were within the same. 22 Aff. 99. Stamf. 30. 126. Co. 11. 41.

§. 5. Lastly, (to make it Burglary) the purpose and intent for which the offender cometh, must of necessity be to kill or rob some person, (or to commit some other Felony) otherwise it is neither Burglary nor Felony. 13 H. 4. 7. Fitz. Cor. 267. Fitz. Cor. 185. & 264. Stamf. 10. Co. 11. 37.

And therefore to break a house in the night, to the intent to kill any person therein, it is Burglary, although he never touched him.

So it is, if the purpose were to rob, although the offender taketh away nothing.

But if a Man break and enter an house by night, of purpose only to beat a Man, this is but Trespass. *Abr. d' Ass. 75.*

Rape, See  
after here  
cap. 107.

And if the intent were to commit a Rape, which some think to be no Felony by the Common Law, but only a Trespass, then there is some doubt, saith Mr. Lambert. And Mr. Crompton saith, That if a Man breaketh another Mans house in the night, and ravisheth a Woman there, this is no Burglary; for (saith he) Ravishment is no Felony by the Common Law, as Burglary is, although it be Felony at this day by the Statute: But it may seem by Mr. Braddon, Glanville, and Stamford, That by the ancient Common Law it was Felony. Lamb. 260 Crompt. 33

Rape.

The words of Mr. Braddon, lib. 2. are thus, *Olim quidem corruptores virginum & castitatis suspendebantur, &c. modernis tamen temporibus aliter observatur, quia pro corruptione virginis amittuntur membra, &c.* And a little after, *Adelstanus; raptus mulierum ne fiat, defendit tam lex humana quam divina: Et sic fuit antiquitus observatum, quod si quis obviaverit solam, cum pace dimittat eam, &c. Si autem contra voluntatem suam, &c. jactat eam ad terram, foris facit gratiam suam, &c. Quod si concubuerit cum ea de vita & membris suis incurrat damnum, &c.* And with this Mr. Glanville also agreeth, fol. 112. *& Co. L. sec. 190.* Note, That the words; *De vita & membris suis incurrat damnum*, do imply the offence to have been Felony of Death. *Br. Cor. 204. Vid. Co. L. 391.* Stamf. 11. 22, 23.

Felony.

Also amongst the Laws of S. Edmond, sometimes King of this Realm, you shall find this Law, *Qui cum Nunna vel sanctimoniali fornicetur, emendetur sicut homicida: A multo fortiori*, then saith Mr. Stamford, shall he be punished if he had ravished her. So as Rape at the first, (saith Stamford) was grievously punished, until the time of King Edward the First, who seemed to mitigate the pain thereof by the Statute of *Westm. 1. cap. 13.* which gave two years imprisonment and fine; but spying the mischiefs ensuing upon the said Law, at his next Parliament holden at Westminster, called *Westm. 2. cap. 34.* he made the offence of Rape to be Felony again, *Br. Coron. 204.* Westm. 2. 21. P. Rape 13.

Note also by Britton, fol. 17. It is no Burglary in an Infant under fourteen years of age, nor in poor persons, that upon hunger shall enter a house for

Crompt. 33  
See Pl. 19.

for victual under the value of twelve pence, nor in Natural Fools, or other persons that be *Non compos mentis*; but for Poor entring for Victual at this day, it is Felony in them.

*'Unc' si pur conservacione de vie, home emble viands de satisfie son present hunger, ceo nest felony, nec larceny. Car necessitas inducit privilegium quoad jura privata. Stamf. Sir Fr. Ba. 29. & hic postea.*

And as for Infants. See *hic cap. 95. & 104.*

Theft. CHAP. CLII. V. 100.

**T**Heft is the fraudulent taking away of another Mans moveable Personal Goods, with an intent to steal them, against (or without) the will of him whose Goods they be: And this is of two sorts, Robbery and Larceny. See *Larceny postea, cap. 101.* §. 1. Definition.

*'Note, That le torcions prisell de biens, one probable pretence de tittle ne que Trespass.*

*'Et nota, quod leges civiles furtum manifestum judicant per redditionem quadrupli: Et furtum non manifestum per dupli compensationem. Dr. Cow. 199. Et vid. Ex. 22. where if the party were not able to make satisfaction, he was to be sold for the Theft.*

Robbery. CHAP. CLIII.

**R**Obbery (in Latine called *Rapina*) is properly the Felonious taking of any thing from the person of another, or in his presence, against his will, by assault in the High-way, or elsewhere, and putting him in fear thereby: And here although the thing taken, be but to the value of an halfpenny, yet it is Felony; for which the offender shall suffer Death, without benefit of Clergy. §. 1. Definition.

As if one by the High-way assaulteth me, and taketh away my Purse, Money, or other Goods. §. 2. What.

But if a Thief assaulteth me to rob me, and biddeth me deliver my Purse, but taketh nothing from me (in regard that I being too good for him shall apprehend him, or shall levy Hue and Cry, whereby he is taken,) this is taken to be no Robbery nor Felony at this day: For although intent may make a Man guilty of Treason (as you may see here before, title *Treason*) yet in case of Felony, there must be an execution of that which was formerly intended, and resolved to be done, viz. to kill the party, or to steal or take away the thing, &c. And therefore in *M. Plo. fol. 259. b. Walsh Serjeant saith, Que intent de faire tort, sans del' act fait nest punishable in n're Ley, nec le Resolution, &c. mez le fessans de l' act est le sole point que nostre Ley respect.*

And yet the assault (yea, to lie in wait) only to rob me, hath been in former times holden to be Felony, as appeareth by the Books, 27 *Aff. p. 38. & 13 H. 4. 7. 25 E. 3. 42. Fitz. Coron. 132. & 267. Br. Coron. 106. 215.*

And so the intent to commit Burglary (or Murder) hath been holden to be Felony; for the Will was reputed for the Deed, *Vide 27 Aff. 38. Fitz. Coron. 383. & Stamf. fol. 17. a.* But the Law is otherwise at this day. §. 3. Taking.

In this former description of Robbery, the word (taking) is largely to be extended against the offender: So that although the Thief taketh nothing from my person, yet if he assaulteth me, and upon his assault he

threatneth to kill me, if I deliver him not my Purse; and thereupon I cast my Purse down, and he taketh it away; this is Robbery.

So if one draws his Sword upon me, and biddeth me deliver my Purse, and I refuse, and after he prays me to give him a penny, and I do so; yet it seems this is Robbery: For, by the assault I was put in fear, and out of that I gave him this Money to be rid of him. Cromp. 34

So if a Thief do only assault me to rob me, and I deliver him my Purse with mine own hand; yet this is Robbery, in regard this fact of mine proceeded from fear, or by his menacing, &c. Ibid.

So in flying from the Thief, I cast my Purse into a Bush to save it, and the Thief seeth me, and taketh it away, this is Robbery; for in this case had they not put me in fear, I should not have cast my Money from me. Stamf. 31

So if one assaults me to rob me, and I flying away from him, my Hat falleth off, and the Thief taketh it up, and carrieth it away; this is Robbery. Cromp. 34

So if a Thief cometh, and biddeth me deliver my Purse (without drawing any weapon, or other force used) and I deliver him my Purse, and he finding but two shillings therein, delivereth it me all again; yet this is Robbery. 20 Eliz. Cromp. 34

So if Thieves do take a Man, and by threats compel him to swear to bring them Money to such a place (at another time) or else that they will kill him, by force whereof he bringeth the Money accordingly; this is Robbery. *Term. Pasch. 36 Eliz.* It was adjudged accordingly. 44 E. 3. 14  
4 H. 4. 3.  
Stamf. 17.

One came to a Fisherman, going in the High-way to Market with Fish to sell, and desired to buy some Fish of him, and he refused; whereupon the other took away some of the Fishermans Fishes against his will, and gave him more Money for them then they were worth; but the Fisherman was thereby put in fear: Whereupon the other was indicted, and arraigned at *Tork* about 26 *Eliz.* But Judgment was respited, for that the Court doubted whether it were Felony, or no. Cromp. 31

§. 4.  
Person.

Also, in the former description of Robbery, the words from the person are not so nicely to be construed, that (to make up Robbery) the Goods must needs be annexed to the body of the person; for in some Cases it may be Robbery, notwithstanding the Thief doth neither take the Goods from the person of the owner, nor yet assault him.

As if in my presence a Felon taketh away my Goods openly against my will; this is Robbery, though he neither taketh them from my person, nor assaulteth me: For the loss is the same, and the fear alike, as though it had been from my person. Stamf. 17.  
Lamb. 36.

And if one or more do take a Horse out of my Pasture, or drive my Cattle out of my Ground, I standing by, and looking on at the same time; this is Robbery, if so be that the Felon doth either make an assault upon me, or doth put me in fear. P.R. 131.

§. 5.  
Fear.

Note, to make it Robbery, the person must be put in fear: For if a Felon doth take Money from me in the High-way, and shall not put me in fear; this is no Robbery. *Lamb. 266. Cromp. 35. P. R. 131.*

And you shall find a Case in my Lord *Dyer*, how a Felon did take Money, to the value of forty shillings, or above, from the person of another in the High-way, and yet for that he did not put his person in fear, by assault and violence. This was holden no Robbery, and the offender was allowed his Clergy for the same Felony, 5 *Eliz. Finch, lib. 2.* Dyer 224

Note also, if two Thieves shall attempt to rob me, and I flie from them, and one of the Thieves follow me, and the other espying another true Cromp. 34



true Man (but out of the sight of his fellow) rides towards him, and robbed him; this was adjudged Robbery in both the Thieves; and yet the one was neither in sight, or knowing of this Robbery: But because they both came to rob, and at the same time, this fact committed by the one, shall be imputed to the other also. It was one *Pudsey's Case*, 28 El.

8 El. 4.  
P. Cler. 1.  
Lamb. 266  
Cro. 34, 35  
Crom. 117  
If one shall cut my Purse, or take or pick my Purse out of my Pocket secretly, or privily and fraudulently; it is Felony of Death, without benefit of Clergy, if it be above the value of twelve pence. *Quere*, if it be under twelve pence, because it is taken from the person of a Man, and the form of the Indictments are *Insultum fecit*. (*Fitz. Coron.* 430.) Also the words (8 Eliz. 4.) are, That no person taking any Money or Goods (generally) from the person of another, &c. shall have his Clergy; and yet by the opinion of Mr. *Lambert* and Mr. *Crompton*, this is no Felony of Death, unless the thing taken be of more value then twelve pence, but Petty Larceny; for which the offender is not to have Judgment of Death, and therefore needeth not his Clergy.

P. Clerg. 1.  
Lamb. 166.  
So if one shall take any Money or other Goods from my person, secretly without my knowledge, or by sleight only, I neither being made afraid, nor witting of it (if it be above twelve pence in value) it is Felony of Death.

26 El.  
Crompt. 353.  
A Man cutteth my Girdle privily, my Purse hanging thereat, and the Purse and Girdle falleth to the ground, but he did not take them up (for that he was espied,) this is no Felony; for that the Thief never had an actual possession thereof, severed from my person: But if he had holden the Purse in his hand, and then cut the Girdle (although it had fallen to the Ground, and that he took it up no more) then had it been Felony if there had been above twelve pence in the Purse) for he had it once in his possession: But these secret and privy-takings from my person, are no Robbery; for he neither assaulted me, nor put me in any fear. *Dyer* 224.

'And in ancient time, the offender only lost his right Thumb. See *'Fitz. Coro.* 434.

# Larceny. CHAP. CLIV. V. 101.

**L** Arceny (being fetched from the Latine word, *Latrocinium*) is properly a fraudulent and felonious taking away of another Mans Personal Goods, removed from his Body or Person, in the absence of the owner, and without his knowledge or will. *'Brañon, lib. 3. cap. 17.* ' & 32. saith, *Furtum omnino non committitur, sine affectu & animo furendi.* §. 1.

And Mr. *Finch* (*tit. Felonies*) saith, That Larceny is the secret taking of the Goods of another, above the value of twelve pence, without pretence of Title.

' *Ce le tortious prisel de biens, ove pretence de tit. n'est que Trespass.*

Grand Larceny is, when the Goods stoln be above the value of twelve pence; and this is Felony of Death, *sc.* wherein Judgment of Death shall be given upon the offender, except he be saved by his Book. §. 2. Grand Larceny.

F. Coro. 451.  
And yet if the Goods stoln, be to the value of ten shillings, if the Jury that passeth upon his Arraignment, shall find, that the Goods did not exceed the value of twelve pence, then that offence shall be taken but for Petty Larceny.

§. 3. Petty Larceny, is, when the Goods stolon, do not exceed the value of twelve pence. And for this the offender shall be imprisoned for some certain time, and after shall be whipped, or otherwise punished by the discretion of the Justices, before whom he is arraigned; but it is not Felony of Death at this day, *Stamf. 24.* And yet by good opinions, the stealing of Goods to the value only of twelve pence hath been holden to be Felony of Death. See *Fitz. Coron. 178.* & *Br. Coron. 84, 85.* & *Forf. 1. Doct. & Stud. 17.* West. 1. c. 15. Br. Cor. 84 & 85. Samf. 24.

Yet may not the Justice of Peace, before whom such an offender shall be brought (out of the Sessions) punish by his discretion the said offender for Petty Larceny, and so let him go, but must commit him to Prison, or Bail him, to the intent he may come to his Tryal, as in case of other Felonies; and if upon his Tryal, the Jury shall find the Goods stollen, to exceed, or to be but twelve pence in value, the offender shall have Judgment to die for the fault.

But if the Indictment be laid twenty pence, and the offender arraigned thereof; yet upon his Tryal, if the Jury shall find the Goods to be but of the value of ten pence: Here the offender shall have Judgment but as for Petty Larceny, *41 E. 3. Abr. d' Aff. 70.*

Also, although Petty Larceny be not Felony of Death, nor punishable by Death, yet it is Felonious act, and a Felonious taking; for the Indictment of Petty Larceny must be *Felonice cepit*: And he shall forfeit all his Goods and Chattels for such a Felony; and there is no difference either in the nature of the offence, or in the mind of the offender, but only in the value of the thing stolon, which also maketh the difference of punishment. And yet by some late opinions, Petty Larceny is but in the nature of a Trespass, and, then where the Principal is convicted but of Petty Larceny, there can be no Accessories, and the Procurers, or Receivers, knowing of the Goods to be stolon, are not to be dealt withal, as for Felony: But to be sent to the House of Correction, or to receive some other punishment, by the discretion of the Justices at the Quarter Sessions. *Quere inde.* 27 H. 22. F. Cor. 111. Br. Cor. 54. 88. 219.

If one shall steal Goods to the value of four pence at one time, and six pence at another time, and of three pence at another time, which together do exceed the value of twelve pence; and that these several Goods be all stolon from one and the same person, then may they be put together in one Indictment; and the offender being thereupon arraigned and found guilty, shall have Judgment of death therefore. F. Cor. 415. Stamf. 24. Cromp. 36. c.

Again, if two, or more together, do steal Goods above the value of twelve pence. This is Felony of Death in them all; for the Felony in them is several, though the stealing be joyntly done. F. Cor. 404. Stamf. 24. l.

By the Law of God, for Theft the offender was to yield at least the double value to the Party robbed; and if he were not able to make full restitution, then he was to be sold for the Theft, *Exod. 22.*

*Leges etiam Civiles furtum manifestum judicant per redditionem quadrupli; & furtum non manifestum per dupli compensationem expiari. Cow. 199.*

Theft.

*Theft.* Now first for the manner. CHAP. CLV. v. 101.

**I**N Larceny, two things must concur, *sc.* to take, and to carry away, or *§. 1.* to remove the thing taken, with a purpose to steal the same; for the *The mas-* Indictment must be, *Cepit & asportavit*, or *cepit & abduxit*; and yet in *nov.* these words, the letter is not so much to be insisted upon, as the meaning, and that for the better suppressing of offenders in this kind.

For although by the Law in Mr. *Glanvils* time, *A furto omnimodo excu-* *Delivery.* *satur, qui initium habuerit suæ detentionis per dominum illius rei*; yet at this day it may be Felony, though the offender take not the thing, but comes first unto it by delivery from the owners own hand, and so cometh lawfully to the Possession.

13 E. 4. 9.  
Stamf. 25.

If a Taverner do set a piece of Plate before his Guest to drink in, and the Guest carrieth it away; this is Felony: For the Taverner gave him no Possession thereof, but only the use to drink in it for the time.

If I deliver Goods to a Carrier (or other person) and bargain with him *§. 2.* to carry them to a certain place appointed; if he carrieth them to the place, *Carrier.* and then conveyeth them away fraudulently, this is Felony: For the privacy of Bailment, was determined when they came at the place appointed. *Ibid.*

So if the Carrier shall take out parcel of the Goods; this is Felony. *Ibid.*

Also if the Carrier shall carry them to another place, and there breaketh them up, and converteth part, or all, to his own use; this is Felony. *Ibid.*

But if the Carrier shall sell, or give away, or otherwise imbezle the whole as he received them; this is holden to be no Felony, because it was delivered him. *Stamf. 25. a. Crompt. 36. a.*

And yet in this last case there is besides the delivery, a bargain and agreement to carry the Goods, and the delivery was only to that intent; so that the property of those Goods did always remain in the first owner. *Ideo quare.*

But if *A.* lendeth his Horse to *B.* being a stranger, who rideth quite away with the Horse; this is no Felony in *B.* by reason of the delivery. And so did Sir *John Dodderidge* Knight, give direction at *Cambridge* Assizes, 1617. upon an Indictment of Felony preferred in such a case. *Quare*, if the Horse had been delivered to a Servant, who rideth away therewith. *Vide postea, sub hoc tit.*

7 Jac. c. 7.

If a Cloathier shall deliver any Wooll or Yarn to his Carder, Spinster, or Weaver, &c. to dress, and they shall convey away, imbezle, or sell any part thereof; this seemeth to be no Felony, by reason of the delivery, but they shall be punished by the discretion of two Justices of Peace, by whipping, or stocking, &c. *Vide antea, tit. Cloth.*

13 E. 4. 9.

So if I deliver my Goods to another to keep, and he fraudulently consumeth them, or otherwise converteth them to his own profit; this is no no Felony, because of the delivery.

And so (it seemeth) if I deliver Money or Goods to *A.* to deliver to *B.* and *A.* flieth away with them, consumeth them, or converteth them to his own use; this is no Felony, by reason of the delivery.

21 H. 4. 14.

13 E. 4. 10.

7 H. 7. 12.

21 H. 7. 15.

If a Man delivers Money to his Servant to keep, or Plate to his Butler, *§. 3.* or Vessel to his Cook, or Horse to his Horse-keeper, or Sheep to his Shep- *Servantis* herd, and such Servant doth go away with them; this is Felony by the Common



Apprentices and Servants under eighteen shall be in case as they were before the making of this Statute.

Common Law in that Servant (for these Goods were always in the Masters Possession, and kept and used by the Servant to the Masters behoof.) But yet there was much difference of opinions herein; for the clearing whereof, in some part, the Statute 21 H. 8. cap. 7. (which was made perpetual, by the Statute of 5 El. cap. 10.) Provided, That all and singular Servants of the age of eighteen years, other then an Apprentice, (which must be understood of such as be bound by Indenture, and by the name of an Apprentice) to whom any Money, Goods, or Chattels, &c. by his or their Master or Mistress shall be delivered to keep of the value of forty shillings, or above; if such Servant shall go away with, or shall imbezle, or shall convert to his own use, any such Money, Goods, or Chattels of the said value, to the intent to steal the same, or to defraud his Master or Mistress thereof, it shall be Felony. But this must be prosecuted within one year after the offence. 21 H. 8. 7.  
P. Felon.  
10.  
Crom. 30.

And now upon the construction of this Statute of 21 H. 8. divers new Questions and Cases have since arose: As,

If a Man deliver an Obligation to his Servant, to go and receive the Money thereupon due; and the Servant receiveth the Money, and then goeth away therewith, as doth convert it to his own use. This is holden to be no Felony within the meaning of this Statute, for the Master did not deliver the Money to his Servant. Dyer 1.

So if a Man delivers to his Servant Wares or Cattle to sell at a Fair or Market, and he selleth them there, and receiveth the Money, and then goeth away with the Money, or converteth it to his own use: This is no Felony within this Statute; for he had not the Money by his Masters delivery, neither went he away with the Goods of his Master delivered him. Dyer 9.

But if the Servant received of his Master twenty pound in Gold to keep, which he changed into Silver, and then ran away with that; this is Felony, for that Gold and Silver are both of the same nature, *sc.* Money. 28 El.  
Crom. 30.

And if a Man delivers to his Servant a Horse to ride to Market, or Money to carry to a Fair, or to buy Cattle, or other things, or to pay to another Man, and the Servant goeth away therewith: This was no Felony by the Common Law, by reason of the delivery thereof to him by his Master: But *quere*, if it be not Felony by this Statute, for that he went away with the thing delivered him. 21 H. 8. 11.

If the Goods delivered to the Servant to keep, be under the value of forty shillings, and the Servant goeth away therewith; this is holden to be no Felony at this day (*Mex tantum un breach del trust que le Mr. repose in son servant.*) But if the Servant shall imbezle, or go away with any Goods of his Masters, which were not delivered to him; this is Felony, although they be under the value of forty shillings, &c.

If a Man appoint his Servant to take and carry Corn to Market, and to take his Horse to carry the same upon, and the Servant goeth away with the Corn or Horse; this is Felony in the Servant, if the Goods, he so goeth away with, be all to the value of forty shillings.

But if a Servant wastfully consumeth the Goods, and returneth again to his Master; this is no Felony. And these were the directions of Sir Nicholas Hide to a Jury of Life and Death, upon the arraignment of a Servant in such a Case, at Cambridge Lent Affizes, Anno 2 Caroli Regis.

And if one of my Servants doth deliver to another of my Servants Goods of mine (to the value of forty shillings) and he doth go away therewith, or converteth them to his own use; this is Felony within this Statute, for this shall be said my delivery. Dyer 9.

If

5 H. 7. 16.  
Br. Pro-  
perty 23-  
Crompt. 50

If a Man delivers to his Servant a piece of Cloth to keep, and the Servant maketh himself a Garment thereof, and after goeth away therewith; this is Felony within this Statute: For that the property is not altered by the making a Garment thereof, because the Cloth may be known still. Otherwise, it is of Barley turned into Malt, or of Money melted and turned into a wedge or piece of Metal, or the like; for that in these cases the Barley, or Money, cannot be known again, but are altered in their nature and kind. But *quare*, and see the words of the Statute.

‘If a Man delivers Goods to one to keep, and after retains the same person into his Service, who after goeth away with those Goods; this is no Felony by 21 H. 8. because he was no Servant at the time the Goods were delivered to him. *Vide Sir Fra. Ba. 39, 40.*

‘If I deliver Goods to the Servant of A. to keep, and after I die, and make A. mine Executor; and before any new Commandment of A. to his Servant for the custody of the same Goods, his Servant goeth away with them; this is out of 21 H. 8. *Ibid.*

Crompt. 50

If my Receiver of my Rents receive ten pounds of my Tenants, and run away therewith, it is no Felony; for the Statute is, where the Master delivereth to keep, &c.

13 E. 4. 9.

If a Man delivers to his Servant the Key of the Chamber-door, and the Servant taketh away his Masters Goods in the Chamber (above the value of twelve pence.) This is Felony at the Common Law, for the Goods were not delivered.

A Man laid and hid a Purse of Money in his Corn-mow within his Barn, and after his Servant finding the same, took part of the Money out of the Purse, &c. And the Servant was therefore indicted and arraigned of Felony, at Cambridge Summer Assizes, *Anno Dom. 1621.* before Sir John Dodderidge.

‘If an Apprentice, or Servant, under the age of eighteen years, shall imbezle their Masters Goods, which were not delivered to them, nor committed to their charge, if the Goods so imbezled be above the value of twelve pence, it is Felony. But if the Goods be under that value, it seems such Apprentice or Servant, may be sent to the House of Correction. *Vide hic cap. 31.*

P. Felony.  
11.  
P. Exec.  
41.

Another Felony there is by the Statute 33 H. 6. cap. 1. in the Servant that shall take away or spoil the Goods of their deceased Master: But this Felony groweth upon their default of appearance in the *Kings Bench*, after Proclamation; and therefore neither the tryal nor hearing thereof belongeth to the Justices of Peace, because they cannot well take knowledge of such default in the *Kings Bench*.

The second thing which must concur (in Larceny) to make it Felony, §. 4. is the carrying away of the thing so taken; and yet it is not of necessity *Carrying* that it be clean carried out of the House or place where it was; but sufficeth, that it be so far removed, that the evil and felonious intent of the Taker, may plainly appear. As,

27 Aff. 36  
See Stamf.  
26 b.  
Br. Cor.  
107.

If a Guest will feloniously take the Sheets, or other Goods of the Innkeepers, out of the Chamber where he lodgeth, and then (going to the Stable for his Horse) is taken with them, or they be found in some other Room of the House where he had laid them; it is Felony in both cases, although the Possession of those Goods continued in the owner.

So is it, if one taketh a Horse in another Mans Close, with an intent to steal him, and he be apprehended before he hath gotten the Horse out of the same Close; this is Felony. *Lamb. 277. & Crompt. 36. a.*

‘If

'If one takes a Sheep in my Pasture or Fold, or a Calf in my Pen, &c. and killeth the same, and be found or taken doing it, and then begins to flie; this is Felony, though he hath not carried the same away out of the place where he first took it.

Next, Of what things Larceny may be committed, and of what not?  
CHAP. CLVI. V. 103.

§. 1. **N**ote, That all Felonious taking of any thing whereof another hath property, is Felony. 22 H. 6. Br. Coron. 190.

Moveable  
Goods.

And therefore Larceny may be committed by taking any of the moveable Goods of any Person, as Money, Plate, Apparel, Household-stuff, or Corn, Hay, Trees, or Fruit, (that are severed from the Ground) or the like; the stealing of them is Felony.

Domestical.

It is also Felony to steal any Horses, Mares, Colts, Oxen, Kine, Sheep, Lambs, Swine, Pigs, Hens or Geese, Ducks, Turkeys, Peacocks, and other Domestical Birds or Beasts of tame Nature. 18 H. 8. 2. For the Nature of these things being tame, (and not savage) if they shall run or flie away, though out of sight of the owner, yet in what place soever they be found, they cease not to be his, so as whosoever detaineth them from the owner is punishable by way of Action.

§. 2.  
Wild.

It is Felony also to take some things that be of wild nature: As to take young Pigeons, which cannot flie, out of another Mans Dove-house or other House; or to take young Hawks, or young Herons, out of their Nests (or Airies) and breeding in a Park, or other several Ground; so to take Fishes that be kept in a Trunk or several Pond: For that the property of such things shall be always adjudged in the owner of the Dove-house, Ground, Trunk, or Pond, in as much as such things cannot (of themselves) go or get out thereof, but that the owner of such Dove-house, Ground or Pond, may take them at all times at his pleasure. 10 E. 4. 17. a. Bingham, & 18 E. 4. f. 8. a.

Fitz. 861.  
Stamf. 26.  
C.  
18 E. 4.

So of old Doves taken in the Dove-coat (in the night time especially;) and so it seemeth of any other wild Beast or Fowl (being of value) and taken within a Mans house.

Br. Cor.  
91.  
22 Aff. 91.  
Kil. 9. b.  
27. b.  
22 H. 8. 9.  
b.  
16 E. 4. 7. 3.

At Cambridge Summer Assizes Anno 1627. there were two indicted and arraigned of Felony before Sir Francis Harvey, for taking Fish out of a Net lying in the River, being the several Fishing of Sir Ed. P.

Also it is Felony to take any Swans that be lawfully marked, though they be at large; for a Man hath property in such. See Co. l. 16. b. 17. a. *Quere*, if they be flying Swans, and not pinioned.

§. 3.  
SWANS.

Also for Swans unmarked, if they be Domestical or tame, *sc.* kept in a Moat, or in Ponds near to a Dwelling-house, and so be *Domni* or *Manui assueta*, to steal such is Felony. See Co. 7. 17. b. *Hic postea*.

So it seemeth of Swans unmarked, so long as they keep within a Mans Mannor, or within his private Rivers; or if they happen to escape out of a Mans Mannor, or private Rivers; yet if they shall be pursued and taken, and brought in again. See Co. 7. 16. b.

But if Swans that be unmarked shall be abroad, and shall attain to their natural liberty, then the property of them is lost, and so long Felony cannot be committed by taking of them.

And yet such unmarked and Wild Swans, the Kings Officers may seise them (being abroad) for, and to the use of the King, by his Prerogative, they being *Volatilia Regalia*: Also the King may grant them, and by consequence



sequence another man may prescribe to have them, within a certain precinct or place; for it may be intended to have a lawful beginning by the Kings Grant. *Co. lib. 7. f. 16. a. b. & 18. a. b.*

Also young Swans or Cygnets, they do belong to both the Owners in common equality, *sc.* to the Owner of the old Cock, and to the Owner of the old Hen, and the Cygnets or young Swans shall be divided between them. *Co. 7. 17.* And to steal such Cygnets is Felony; for they shall be of the same nature with the old Cock or Hen.

10 E. 4. 15. Also it is Felony to take a tame Deer which is marked and domestical, especially if the Taker knows it to be tame and domestical, or that it wear- §. 4.  
eth a Bell. *Scamf. 350*

If a Hart, Bull, or other Beast which hath been wild by nature, and made tame, and hath at his neck a little Collar of Leather, or any other notorious sign, and doth go abroad, and returneth again to the house (of his Master or Owner) at his pleasure, if he be taken by a stranger and killed by night, or in other secret manner, this is Felony by the Common Law. *Crompt. Author des Corts, 167.*

But by the Common Law, Larceny cannot be committed by taking of savage or wild Beasts, Fowls or Fish, found in their Wilderness and abroad, or at large; as Deer, Conies, Hawks, Doves, Pheasants, Partridges, Herons, Swans unmarked, or Fish that are at liberty, &c. for no persons can claim property in them. *Fitz. 87. a. Fi. 45.*

'By the Stat. *de Foresta c. 10. Nullus de cetero amittat vitam vel membrum pro Venatione nostra* (*sc.* pur tuer Deere le Roy:) which branch is but an affirmation of the Common Law. *Crompt. Author des Corts, 166.*

P. Felon. 24. Howbeit by Stat. it is now made Felony to hunt Deer or Conies (after some sort) in a Forrest, Park, or Warren; or to take a tame Beast or other thing in a Park, by manner of Robbery. See the Stat. made 3 Ed. 1. 20. & 1 H. 7. c. 7. *Vide postea Felony by Stat. tit. Hunting.*

P. Felon. 20. Also by Statute it is Felony to steal, take away, or conceal a Hawk. *Ibidem.*

Co. 17. b. But for the better understanding what the Law is in things that be *feræ naturæ*, observe these differences. *Fi. 4.*

In some things that be *feræ naturæ* a man hath a right and property, and in some of them a right of privilege. §. 5.  
Property.

There be three manner of rights of Property: *sc.*

1. Absolute. This property a man cannot have in any thing which is *feræ naturæ*, but only in such things as are *domitæ naturæ*.

2. Qualified. } These properties a man may have in things *feræ naturæ*; and to such properties a man may attain by two means:

3. Possessory. *sc.*

1. By Industry: and this may be either by taking them only, (and yet such things be his no longer then they be and remain in his possession or custody;) or by making them tame, (*sc.* *mansueta, id est, manni assueta*, or *domestica, id est, domui assueta*.) But in these last a man also hath but a qualified property, *sc.* so long as they remain in his possession, and so long Felony may be committed by taking of them away; but if they attain to their natural liberty, and have not *animum revertendi*, then the property of them is lost. §. 6.  
Property how gotten

2. *Ratione impotentie & loci*: As where a man hath young Goshawks, or Herons, or the like, which are *feræ naturæ*, and do breed (or air) in his Ground, he hath a possessory property in them; so as if one takes them when they cannot flie, the Owner of the soil may have an Action of Trespass, *Quare boscum suum fregit*, & *tres pullos Espervorum suorum*, or *Ardea-*  
*rum*

*rum suarum, pretii tanti, nuper in eodem bosco nidificantium cepit & asportavit.* And to take these away, is Felony, as is aforesaid. 18 E. 4. fol. 8. *Stamf. 25. c. Fitz. 86. l. & 89. k.*

Also note, That my Hawk which is flying at a Fowl, and my Deer that is chased out of my Park, so long as my Servant or Keeper maketh fresh sute after them, they still remain in my possession, and the property is still in me: But if they stray, it is lawful for any man to take them. *Fi. 45.*

But when a man hath Beasts or Fowls (that be savage, and in their wildernes) *ratione Privilegii, sc.* by reason of a Park or Warren, &c. (as Deer, Hares, Conies, Pheasants, or Partridges, or the like, which be things of Warren) he hath no property in them: And therefore in an Action *Quare Parcum, or Warrenum, &c. fregit & intravit, & 3. damas, lepores, cuniculos, phasianos, perdices, &c. ibidem invent. cepit, & asportavit,* he shall not say *suos*, for that he hath no property in them, but they belong unto him *ratione Privilegii*, (for his Game and Pleasure) so long as they remain in the place privileged. And if the Owner of the Park dye, his Heir shall have them, and not his Executors or Administrators; for that without them the Park (which is an Inheritance) is not compleat: neither can Felony be committed by taking of them. *Fit. 86. m.*

§. 7.  
Dogs.

Neither can Larceny be committed by taking of Dogs of any kind, Apes, Parrats, Squirrels, singing Birds, or such like thing, (kept only for pleasure, and not for any profit) though they be in the House, and made tame. *Lamb. 27.*

No not by taking a blood-hound or Mastiff, although there is good use of them, and that a man may be said to have a property in them, so as an Action of Trespas lieth for taking them; yet in regard they are things of so base a nature, no Felony can be committed by taking them. *Co. 7. 11. 11 H. 8. 3 Br. Trespass. 407.*

But yet to take a Dog of any kind, or other thing of pleasure, from the person of another, or out of the possession of another, and in his presence, if it be done with force, or violence, it amounteth to a breach of the Peace. And if it be done with force, and by the number of three persons or more, it will amount to a Riot, as it seemeth.

Also it is Felony to steal the Flesh of any tame or wild Fowl, or of any Deer or other Beast that is dead, out of the possession of another man. *Stamf. 254.*

So it is to pull the Wool from the Sheeps back, or to kill them, and to take the skin, and leave the body behind.

So it is to clip or shear another mans Sheep, and to carry away the Wool; and to brand or mark with his own Brand, or Mark another mans Sheep.

But note, that in all these cases of Felony aforesaid, the thing so taken or stollen must exceed the value of 12 d. though some opinions have been otherwise; also it must be of a thing personal, and not real. *Crompt. 36.*

§. 8.  
Things  
real.

For the taking of any real Chattel or thing is no Felony: as,

If one cuts down my Tree, or my Corn, and carrieth it away, or pulleth and stealeth my Apples hanging on the Tree, and carrieth them away; these are no Felonies, for these things be part of my Free-hold, till they be severed. *Stamf. 25. 10 E. 4. 17. Co. 4. 17.*

But if I gather mine Apples, or cut down a Tree or Corn of mine own, then it is Felony, if another man shall carry them away Feloniously.

And by the opinion of *Mar.* if a stranger cuts down my Tree or Corn without Title, and another time after he fetches it away, that will prove Felony, *Stamf. 25.*

Lam. 27. 2. Felony, because it was a Chattel severed when he took it. See 12 Aff. p. 32.  
Cromp. 26 Br. Coron. 76.

Cromp. 37 Also to take Lead from off a House, or Church, will not amount to Felony, for it is parcel of the House or Free-hold.

Lam. 27. 1. Also to take away the Evidence of a mans Land, or any Indenture of Lease, or any Obligation, Deed, Specialty, or other Writings, ( be they in or without a Box ) it is no Felony, because they cannot be valued; and again, because they concern Inheritance, Chattels real, or things in action: yet if they be in a Box unsealed, it seemeth that the taking of the Box Feloniously is Larceny; but if the Box be sealed, and have Writings within it, the Box shall be of the same nature as the Writings that be therein. 10.

Ed. 4. fol. 16.

Scamf. 25. So to take away an Infant in Ward is no Felony.

Scamf. 2. Also the taking and carrying away of such things whereof the Owner is unknown, in some cases is no Felony: as the taking away of Treasure <sup>§. 9. The Owner is not known.</sup> that was hidden or lost, ( be it Money, Bullion, or Plate ) or of Wreck of the Sea, or Goods that be waived, or Strays ( before they be lawfully seized, &c. ) it is no Felony; but the takers away of such Treasure, Wreck and Waif, shall be punished by Fine and Imprisonment. 22 Aff. p. 99. Br. Coron. 96. Fit. Coron. 187. & 265. Vide Bract. lib. 3. fol. 119. & 120.

Dyer 99. And yet where the Goods be *bona cuiusdam hominis ignoti*, or *bona cuiusdam mortui & ignoti*, or *bona Parochianorum*, or the Goods of a Church or Chappel, ( as Bells, Books, Chalice, Surplices, Bell-ropes, &c. ) or the Goods of any Corporation in time of Vacation; in these cases there be owners of them to some purpose, and therefore it is Felony to steal such Goods. Vide Cro. 25.

One Nottingham digged a dead body out of his Grave, and took away his Winding-sheet; this was holden to be no Felony, but punishable as a Misdemeanor, and the Offender was adjudged to be whipped, &c. for it: this was at Cambridge Summer Affizes, Anno 1617.

Note also, That a man may commit Felony by taking his own Goods: as, <sup>§. 10. His own Goods.</sup> If A. do lend or deliver Goods to B. to keep, and after A. doth take

7 H. 6. 43. them away feloniously, or privily and fraudulently, ( to the intent to charge B. or to recover Damages for the same against B. by an Action of Detinue ) this is Felony in A. and yet the property of the Goods was in him: yet M. Brook, Coron. 142. maketh a *Quere* thereof.

Mar. 1c. 12. Cromp. 37. But if I lend my Plate, or deliver my Goods to another to keep, and he melteth my Plate, or changeth the fashion of my Goods; now if I should take that Metal or those Goods feloniously, it were Felony in me, because the property is altered by altering of the Fashion. See a little before.

If the party Robbed taketh his Goods again from the Thief, and suffereth him to escape, Vide postea, tit. Accessaries.

Cromp. 37. P. R. 129. A man findeth my Purse in the High-way, and being asked thereof, denyeth it; this seemeth to be no Felony, for he came not thereby at the first feloniously: but by the Levitical Law he was to restore the thing found, with an addition of the fifth part more thereto. Levit. 6. 3, 5. Numb. 5. 7.

A man hath two Chains, the one of Gold, the other of Copper, and he selleth the Gold Chain, and delivereth it, and presently after he secretly conveys away his Gold Chain, and puts the Copper Chain in the place thereof: this is Felony. Lectur. M. Coke.

So if one taketh away my Horse, and leaveth another of his ( which is like unto mine ) instead thereof, this is Felony. Ibidem.



A man cometh to my Wife, or to my Servant, with a false Message, Token, or Letter made in my name, and thereby getteth my Goods: yet this is no Felony, but it shall be punished by the Stat. of 33 H. 8. cap. 1. See *antea*, tit. Counterfeiters.

*What Persons are chargeable in Larceny.* CHAP. CLVII. V. 104.

§. I.  
Wife.

A Feme Covert doth steal Goods by the compulsion or constraint of her Husband; this is no Felony in her. *F. Coron.* 160. & *Fitz. Coron.* 199. *Br. Coron.* 108. For where the words of the Law are broken by compulsion, there the Law is not offended, neither shall any person be damnified for doing a thing, whereto he is enforced or compelled, but such compulsion shall be a good excuse in our Law. *Pl.* 19. a. b.

But yet if by the compulsion of her Husband, she committeth Murther, this is Felony in them both.

If a Feme Covert doth steal Goods by the commandment or procurement of her Husband, (without any constraint) this hath been holden to be Felony in her, *scil.* that the Wife in such case is a Principal, and the Husband but an Accessary. *M. Bracton* also saith it is Felony; for *Licet uxor obedire debeat viro, in atrocioribus tamen non est ei obediendum*: but *M. Stamf.* and others seem to be of another opinion. *Stamf.* 26. *P. R.* 130. *Br. Coron.* 108.

If the Husband and the Wife joyn in committing of Treason, the necessity of Obedience doth not excuse the Wives Offence, as it doth in Felony, because it is against the Commonwealth; for, *Privilegium non valet contra Rempublicam.* *Ba.* 32.

But if the Husband and the Wife joyntly together do steal Goods, this shall be taken to be the only act of the Husband, and such Felony shall be imputed only to the Husband, and not to be Felony in the Wife, by some Opinions. *Vide Stamf.* 26. & *Lamb. Fitz. Coron.* 160. & *Ba.* 31, & 37. that the Wife can neither be Principal nor Accessary, in regard of the Subjection and Obedience she oweth to her Husband.

And yet *Mr. Bracton* seems to be of another opinion herein, saying, *Quid erit si uxor cum viro conjuncta fuerit, vel confessa fuerit, quod viro suo consilium prastiterit & auxilium? nunquid tenebuntur ambo? imo, ut videtur.* (And a little after he saith,) *Alter eorum potest esse malus per se, & alter bonus; ita uterque eorum possit simul & conjunctim esse malus.*

And again, *Sicut sunt participes in crimine, ita debent esse participes in pena.* *Ibidem.*

And *M. Bracton* seemeth to make this difference, That although the Wife may conceal her Husbands Offence in case of Felony, (as also she may relieve and keep company with him, knowing him to be a Felon) *Consentire tamen non debet Felonie viri sui, neque esse coadjutrix, sed Feloniam & nequitiam viri impedire quantum possit.* And accordingly at Cambridge, at Lent Assizes, Anno 1619. The Wife was in such case Indicted and Arraigned with the Husband for Robbing of a Wind-Mill.

Again at Cambridge, Lent Assizes, 1620. One *William Houghton*, and *Katharine* his Wife, were together Indicted and Arraigned for stealing certain Apparel: and the Husband and Wife were Indicted for the like at Lent Assizes, Anno Dom. 1624.

Also the Wife is chargeable for Trespas done by her and her Husband together; and therefore (howsoever) it shall be safe for the Justice of Peace, in such cases, to commit the Wife to the Gaol as well as the Husband.

And

And yet for this case of a Trespass committed by the Husband and Wife, Sir Fr. Bacon giveth this Rule, *Excusat aut extenuat delictum in Capitalibus quod non operatur idem in Civilibus: sc.* In capital Causes, in favorem vite, the Law will not punish in so high degree, except the malice of the will and intention appear. pag. 36, 37.

Stamf. 6.

But a Woman covert alone by her self (the Husband not knowing thereof) may commit Larceny, and may be either Principal, or Accessary: as if she steal another mans Goods, or receive the Thief that stealeth them; or shall receive stolen Goods into her House, knowing them so to be; or shall lock them up in her Chest or Chamber, her Husband not knowing thereof; and in such cases, if her Husband, so soon as he knoweth thereof, do forthwith forsake his House and her company, and make his abode elsewhere, he shall not be charged for her Offence; whereas otherwise the Law will impute the fault to him and not to her. P. R. 130. See Bracton. lib. 3. c. 32.

F. Cor.

383. See

Stamf. 26.

M. Bracton saith farther, *In certis casibus de furto tenebitur uxor, si furtum inveniatur sub clavibus suis, quas quidem claves habere debet uxor sub custodia & cura sua; Claves viz. dispensæ suæ, arcæ suæ, & scrinii sui; & si aliquando furtum sub clavibus istis inveniatur, uxor cum viro culpabilis erit, sc. vir si consenserit, vel rem ei Warrantizabit. Ibid.*

Goods are delivered to the Husband to keep, and his Wife stealeth them, it is no Felony. Otherwise it is if the Husband had delivered them to a stranger, and then the Wife had taken them Feloniously out of the possession of the stranger, this had been Felony in the Wife. Mar. Lett. 12.

J. Cor.

455. Br.

Cor. 142.

Stamf. 27.

Also the Wife shall not be accounted a Felon for taking or stealing the Goods of her Husband; and if the Wife do take her Husbands Goods secretly, and deliver them to a stranger knowing thereof, yet this is no Felony in the stranger. See Abr. d. Ass. fol. 71.

Br. Cor. 77

Crompt. 35

P. R. 130.

But if a man do take away another mans Wife with her Husbands Goods against the Wives will, this is Felony by the Statute Westm. 2. ca. 34. as it seemeth: and so if any man takes away another mans Wife with her Husbands Goods against the Husbands will, this also is Felony.

If a Married woman shall deliver to her Adulterer, her Husbands Goods, this is Felony in the Adulterer. Lett. Mr. Cook.

And if the Husband commits Larceny, and the Wife, knowing thereof, do receive or releive him, &c. she is not thereby Accessary to the Felony. Vide postea, tit. Accessary.

Note, that a Woman convicted of or for the Felonious taking of any Money, Goods or Chattels above the value of 12 d. and under 10 s. or as Accessary to any such Offences, (the said Offences being no Burglary nor Robbery in or near the High-way, nor the Felonious taking of any Goods from the person of another privily) shall for the first Offence be branded in the hand, and farther punished by Imprisonment or Whipping, at the discretion of the Judge, or Justice, before whom she shall be so convicted, 21 Jac. cap. 6.

If a Servant by the compulsion of his Master stealeth another mans Goods, this is Felony in them both, notwithstanding such compulsion. See more of Servants here before, *sub hoc tit.* §. 2. Infant:

Lamb. 273

An Ideot, Lunatick, Dumb and Deaf person, and an Infant, are chargeable in Larceny, after the same sort as they are chargeable in Homicide, saith Mr. Lambert; yet *quare inde*, and see here before in *Man slaughter*. And yet if an Infant shall commit Larceny, and shall be found guilty thereof

thereof before the Justice of Peace; it shall not be amiss to respite the Judgment; and so hath it often been done by the Judges. See *Stamf.* 27. & 3 H. 7. fo. 1. b. & 12. b. & 35 H. 6. 11. Br. *Covert.* 80.

At Cambridge Assizes in Lent 1619. before Sir Henry Mountague and Sir John Dodderidge, Judges of Assize there, they sitting together upon the Prisoners, an Infant about 14 years of age was arraigned before them of Larceny, and was found guilty, and upon demand of his Clergy had the same allowed him, and was burnt in the hand.

The like was done there at Lent Assizes, 1624. before Sir Randal Crew, Lord Chief Justice. See *Doct. & Stud.* fol. 148.

A Bailiff, &c. distraineth secretly for Rent, and after selleth the Distress, and when the Owner demandeth his Goods which were so distrained, the Bailiff denieth them; this is Felony. *Let. M. Cook.*

If an Escheator or other Officer cometh to a man, and telleth him that he is Outlawed, when he knoweth he is not Outlawed, and by colour thereof he taketh his Goods; this is Felony. But if the party be indeed Outlawed, and the Officer cometh to take his Goods, and the other party sheweth him a *Superfedeas*, and notwithstanding the Officer taketh away his Goods; this is no Felony. *Ibid.*

If an Officer shall levy any Duty for the King without Warrant, this is Felony. *Let. M. Cook. Vide my Officer of Sheriff, cap. 126.*

So where any Officer shall levy any Duty without sufficient Warrant or Authority, and shall after convert the same to his own proper use, it seems to be Felony.

Of Thefts and Rapines committed upon the Borders of the Countries of Northumberland and Cumberland, and Power of the Justices of the said Counties to secure the same against the Spoils and Rapines of *Moss-Troopers*, see the said Act at large: the same being to continue in force five years, and no longer. 14 Car. 2. cap. 22.

Other Felonies by the Common Law. CHAP. CLVIII. V. 105.

§. I.  
Burning  
Houses.

Burning of a Barn (which is adjoyning to a dwelling house) in the night feloniously, is Felony by the Common Law. 11 H. 7. 11  
Co. 4. 20.

So is it to burn a Barn (in the day time) having Corn in it, and though it adjoyned not to the dwelling house. *Co. 4. 20.* Lamb. 264

Burning of any dwelling house, or other house parcel thereof, willingly and feloniously done, is Felony by the Common Law, whether it be done by night or by day. *Br. Coron.* 135. 155. 226. 3 H. 7. 10  
Co. 11. 19.  
Stamf. 36.

Burning of any other house, or of a Stack of Corn, feloniously, seemeth also to be Felony by the Common Law: for the words of the Statute of *Westm.* 1 cap. 15. (which Statute seemeth to be but a rehearsal of the Common Law, *Br. Mainpr.* 78.) ordaineth, That such as be taken for house-burning (generally) feloniously done, be not bailed: and of that Opinion seemeth *Maft. Britton*, who wrote presently after the making of the same Statute; *Britton* fol. 16. See Statute *Winchest.* 13 E. 1. cap. 1. & 28 E. 1. cap. 17. And it appeareth also by *Britton*, lib. 1. cap. 17. that such Offenders were by the Common Law to have been burned. *Fitz.* 269. b. Fit. 169. b.  
Co. 11. 19.  
Stamf. 36

The Book called the *Mirror of Justices*, among other capital Offences hath this, *Le crime de Arson*: And he describeth the Offenders in this sort, *Ardoirs sont qui ardent Citie, Ville, Meason, Home, Beast, ou anters Chattels de leur Felony in temps de Peace, par pain ou vengeance.*

If



If a man will burn his own House willingly, this is no Felony. But if by such Burding, he burneth his Neighbours House, this seemeth to be Felony.

A man intending to burn another mans House, casteth Fire thereupon, and after that is kindled and burnt in part, it is quenched; this is Felony, although the whole House were not burnt down.

So it seemeth, if a man shooteth unlawfully in an Hand-gun, and the fire thereof sets another mans House on fire and burneth it down, this is Felony, *Quere.*

If an Indictor (or Juror) in case of Treason, or Felony, shall discover the Kings Council and his Fellows, it hath been adjudged Felony. *Vide antea, tit. Petty Treason.* §. 2. Discovery.

Rescuing, or taking away from an Officer, any Offender, who is attainted, imprisoned, or but arrested for Felony, such *Rescous* is Felony, as well in him that made the *Rescous*, as in him that is Rescued. See more here, *pag. sequent.* Rescous.

Also when a man hath arrested another for Felony, and after letteth him go at liberty, this is a wilful escape, and shall be adjudged Felony in him that did so let him escape. And in case of Treason such escape is Treason. See *paulo postea.* Escape.

Breaking of Prison (before the Stat. *De frangentibus Prisonam*, made 1 E. 2.) was Felony by the Common Law, for what cause soever he were in Prison, yea, though he had been imprisoned but for a Trespass. But now that Stat. hath changed the Common Law therein: so that now, if a man be Imprisoned, or Arrested, or taken for a Trespass, and do make an escape, or be rescued by a stranger, this but a fineable at this day. *Vide Fi. libro 2. & Stat. 10 E. 2. hic cap. 106.* Breaking of Prison.

If an Offender which is adjudged, or otherwise by Law is to abjure the Realm, shall depart, and after such departure shall return again without the Kings Licence; then if the cause for which he did abjure were Felony, the Offender so returning shall have Judgment of life and of member by the Common Law. But if the cause were not for Felony, then the Offender by the Common Law shall be taken, and only make a Fine to the King. But now see the Statute of 35 Eliz. 1 & 2. where it is made Felony also for Popish Recusants, or other Sectaries, which are to abjure, if after Abjuration they shall return without the Kings special Licence. See *hic postea.* Abjuration

### Felonies by Statute. CHAP. CLIX. V. 106.

**I**F any man, being the Kings sworn Servant, &c. shall confederate, imagine, compass, or conspire with another to destroy the King, or any Lord of this Realm, or any other sworn to the Kings Council, or the Steward, Treasurer, or Controller of the Kings House, it is Felony: but what the Justice of Peace may do herein, See *antea, tit. Felony.* §. 1. Conspiracy.

Breaking of Prison by one being therein for Felony, or by one being a Prisoner for Felony, is Felony. Breaking of Prison

And yet by the Common Law, if the Prison had been broken by the party himself, it had been Felony, whatsoever the cause of his Imprisonment were, yea, although it were but for a Trespass. *Vide Stamf. 30. c. & M. Finch lib. 2.*

But now by the Statute 1 Ed. 2. it is no Felony, except the Prisoners were there committed for Felony. *Vide Co. Inst. 2. Part, 589. upon the Statute de*

*frangentibus Prisonam. Fitz. Coron. 248. Escape non adjudicabitur vers. ipsum qui commiss. est pro transgress.*

Now every one who is under Arrest for Felony is a Prisoner, and that as well without the Prison as within, or in the Stocks in the High-street, or in the possession of any that hath Arrested him, or that hath the keeping of him being Arrested for Felony. *Vi libro 2. M. Finch.*

§. 2. And therefore if any person who is under Arrest for Felony, or suspicion thereof, (whether he be in the Gaol or out, or but in the Stocks, or but in the possession of any that hath Arrested him) if he shall make an escape, this is a breaking of Prison in such Prisoner, and is Felony. *Dyer 99. 1 E. 3. 17. P. R. 147.*

And yet one committed to the Constable (by the Justice) for suspicion of Felony, making an escape from the Constable, was after taken again, and Indicted and Arraigned for that Felony, and by the Jury of life and death was found not guilty of that Felony; and after was Indicted for the escape: But here, considering the Prisoner was found not guilty for the first Felony, therefore his escape from the Constable was holden not to be Felony; and so I have known the Jury directed by the Judge of Assise.

§. 3. Before the Statute of 1 Ed. 2. if it had not been the Kings Prison which had been broken, it had been no Felony, as it appeareth by Britt. fol. 17: And with him also agreeth the Book called the *Mirror of Justices, lib. 2.* who saith thus, *Gaole nest auter chose que common Prison, & nul avera tiels forsq; le Roy: Private prison est d'auter, dont a chescun list de scaper que poet, si non que il face auter trespass que lescape.*

But note, that at this day there is no difference whose Prison the Offender doth break, whether it be the Kings Prison, the Lords of a Franchise, or any other persons; for the Letter of the Statute is, *Prisonam frangentibus*, and not *Prisonam nostram*: so that whose Prison soever it be which is broken, it is within the compass of this Statute. *Stamf. 31.*

Also whether it be a common Gaol, or a private Gaol or Prison, yea or but the Constables house, or the house of any other person who hath the custody of him for Felony, there is no difference; for these are Prisons for the time, and so within both the words and meaning of this Statute.

Also by this Statute the breaking of Prison is Felony in the Prisoner himself: And yet if the Prison shall be on fire by casualty, and they within shall break the Prison for saving of themselves; this is no Felony, but excusable by the Law of Nature. *Flo. fol. 13. b. 14 Hen. 7. 29. Read 15 H. 7. 2.*

§. 4. And if a Stranger doth break the Prison, or open the Stocks, or make a Rescous, whereby one Imprisoned or Arrested for Felony escapeth; this is Felony both in the Prisoner and in the Stranger, although the Prisoner was never Indicted of the Felony. *1 H. 7. 6. 1 Ed. 3. 17. Dyer 99.*

By some Opinions, if a Stranger shall disturb the Arresting of a Felon, it is no Felony, except the Felon were taken and Arrested, and after Rescued: Yet *Fitz. Just. P. fol. 114.* saith, That such disturbance before Arrest is Felony. *9 H. 4. 1. R. Co. 333. Stamf. 33. 2.*

If a Prisoner be Rescued at the Gallows, or as he is going to Execution, this is a breaking of Prison, and Felony within this Statute. And yet note this difference: *sc.* That if a Felon, in going to his Execution, &c. be Rescued from the Sheriff, this is Felony, if it be presented before the Justices, &c. and so found by Enquest: but otherwise it is, if it cometh in by the Return of the Sheriff, there it is no Felony. *1 H. 7. fol. 6. Fitz. Indictment 30.*

§. 5. If a Gaoler, a Constable, or any other which hath a Prisoner under Arrest for Felony, or suspicion thereof, voluntarily letteth or suffereth him

44 Aff. 18. to go at liberty; (though this be no breaking of Prison, yet) this is Felony in the Gaoler, Constable, or him that letteth such Prisoner escape, but it is no Felony in the Prisoner; but if such a Prisoner shall escape by the negligence of his Keeper, then the Felony resteth in the Prisoner only, and not in the Gaoler, &c.

Br. Esc. 31. 'If any man Arrest another, and after voluntarily lets him go at large, if the Arrest were for Felony, it is Felony in him that so lets his Prisoner go, if the Arrest were for Treason, it is Treason, and if for Trespass, it is Trespass, & sic de similibus.

Stamf. 31. If the Gaoler or Keeper shall marry a Felon which is in his Gaol, this is an escape; but *quere*, whether it be Felony in the Gaoler or no.

If a Gaoler shall let a Felon to Mainprise which is not mainpernable or bailable, *dicitur* that this is no Felony, but finable; for although it were voluntary, yet it was *per ignorance del Ley*. But *quere* hereof, for that the Gaoler hath no Authority to let any Prisoner to Bail; and the Prisoner being in for Felony, the Sheriff at this day hath no Authority to Bail such a Prisoner, except it be by virtue of the Kings Writ, &c.

If the Constable (or other Officer) shall voluntarily suffer a Thief, being in his custody, to go into the water to drown himself, this escape is Felony in the Constable, and the drowning is Felony in the Thief, *quia Felo de se*.

Otherwise, if the Thief shall suddenly (without the assent of the Constable) kill, hang, or drown himself, this is but a negligent escape in the Constable.

P. R. 149. The voluntary letting of a Felon to escape who is not arrested for Felony, though he knoweth of the Felony, yet it is no Felony; neither can it be an escape without an Arrest: and yet such an Offender (being an Officer) may for such his negligence or default be indicted and fined, as it seemeth by the words of the Commission. *Quere* if he be not accessory to the Felony. See *Br. Escape* 43.

Dyer 440. Note, that a man is always said to be in Prison, so long as he is within the sight of the Gaoler, or of him that hath him in custody, though he do break away or escape.

Stamf. 33. For an escape is properly, when a Prisoner shall escape or get out of the view of his Gaoler or Keeper, and shall be taken again by fresh sute.

Br. Esc. 4. & 35. And if a Prisoner shall make an escape, (of his own wrong, and without the consent of the Gaoler, or other person that hath him in custody) though he Escape out of their sight, and into another County, yet if he be taken again upon fresh sute, before the Gaoler, &c. be sued, or hath fined for the escape, (though it be seven years after) yet this is no escape, as it seemeth, for which the Officer shall be charged; for there is no prejudice to the King by the escape, though it be Felony in the Prisoner as aforesaid, and a breaking of Prison in him. *Co. 3. 44. & 52.* accordeth in case of a Prisoner taken in Execution, that shall make an escape of his own wrong.

Co. 3. 44. If a Gaoler, or other Officer, &c. shall licence his Prisoner to go abroad for a time, and to come again; this is an escape, because the Prisoner is found out of the bounds of his Prison, though the Prisoner return again, according as he shall be prescribed; and so is it, if the Officer shall suffer his Prisoner to go abroad for a time by Bail or Balton, this is an Escape: yet they are holden in both cases to be but negligent escapes in the Officer, and so but finable. But *quere*, for the Gaoler, and other Officers, ought to keep their Prisoners in *salva & arcta custodia*. *Vide post, tit. Imprisonment.*

Fixz. Cor. 243. & 431

Note,



Note, that the Sheriff of every County shall have the keeping of, and shall be chargeable and charged with the common Gaol and Prison of the same County, and with all the Prisoners therein; and must put in such Gaolers or Keepers for whom they will answer, as appeareth by the Statutes, 14 E. 3. c. 10. & 19 H. 7. c. 10. which also seemeth to have been the Common Law before, as you may see by the Preamble of the Stat. of 14 Ed. 3. & Co. 4. 34. And therefore the High-Sheriff himself shall be answerable for an escape of a Felon, suffered by his Gaoler, and may be indicted for the same, (see the Precedents in *Lambert, West. Crompton.*) <sup>6 H. 7. 11. Co. 4. 33. West. M. 1 Co. 4. 98. Lamb. 11. 5.</sup> And so the High Sheriff, as he hath an Office of great Antiquity, and of great Trust and Authority (for the time,) so withal it is a place of great peril and charge; and if the rigour of Law should be laid upon them, then should they have a warm Office, and be well rewarded. But in such cases I have observed the favourable exposition and dealing of the Learned and Reverend Judges. First, you shall find in *Sir Edward Cook's Reports*, <sup>Temp Ed.</sup> lib. 9. f. 98: that the Gaolers who have the actual possession shall be answerable for escapes, if they have wherewith: also *Popham* Chief Justice did cause one *Staver* (a Gaoler at *Cambridge*) to be indicted, arraigned, hanged, for an escape of a Felon suffered by him.

In the *Doff. & stud. cap. 42.* this difference is taken: *sc.* that if the escape were by default (*sc.* a negligent escape) of the Gaoler, that the King may charge the Gaoler if he will, or the Sheriff may be charged by reason of the Statute 14 E. 3. c. 9.

But if it be a wilful escape in the Gaoler (which is Felony in him) the Sheriff shall not be bound to answer to the Felony, (See there *fol. 135. & 137.*) But there the Sheriff may be fined to the value of his Goods, *Stamf. 35. b.*

s. 6.  
Escape is  
of two  
sorts.

Now an escape is of two sorts: voluntary, and negligent.

Voluntary escape is, where one doth arrest or hath imprisoned another for Felony (or other Offence,) and after voluntarily letteth him go at liberty where he will. <sup>Stamf. 31.</sup>

Negligent escape is, when the party arrested or imprisoned doth escape against the will of him that arrested or imprisoned him, and is not freshly pursued and taken again before he hath lost the sight of him which escaped; the penalty whereof seemeth to be only a Fine at the discretion of the Judges or Justices: Yet See *Stamf. 35. k.* a difference of the Fine: where the Prisoner is attainted, *le Fine serra C. li.* where but indicted, *C. s.* and where only taken upon suspicion, *semble dispunishable. Quere & vide F. Coron. 224. 316. 454. & hic infra*, that in case of a Trespass a negligent escape is finable. <sup>Stamf. 31.</sup>

But for voluntary escape, if the Arrest or Imprisonment were for Felony, it shall be adjudged Felony in him which did voluntarily suffer the Prisoner to escape; and if the Arrest, &c. were for Treason, it shall be adjudged Treason; and if the Arrest or Imprisonment were for a Trespass, it shall be adjudged a Trespass; And yet see *Fitz. Coron. 248.* *Escapē, non adjudicabitur pro transgr.* And in case of Felony there is no difference, whether the Felon be arrested by an Officer, or by another. See *Br. Cor.* <sup>Stamf. 32.</sup>

Also in case of a Trespass, or other Offence of what kind soever, (being neither Treason nor Felony) there seemeth no difference, whether the escape suffered by the Officer be voluntary, or negligent; but that the Officer in both cases shall be fined for such an escape, according to the quantity of his fault, by the discretion of those that shall be Judges of it.

One *Nicholas* assaulted *Cholmly* to Rob him, and killed him; after *Q. El.* granted *Nichols* his Pardon: but *Cholmly* his Wife having commenced her

her Appeal against *Nichols*, he was still detained in Prison at the Womans Suit: after the Gaoler suffered *Nichols* voluntarily to go at large, and so to escape. By the opinion of *M. Plowden*, this was Felony in the Gaoler, although N. the Prisoner were now no Felon to the Queen, in regard he had obtained his Pardon. *Plow. 476. b.*

*P. Co. 430*  
*R. 431.*  
*P. R. 150.*  
A Prisoner found guilty of Petty Larceny is adjudged to be imprisoned by the space of a moneth, (for his punishment) and after the moneth he breaketh Prison, and escapeth: *quare* what this is in the Prisoner, and what in the Gaoler. It is holden that the Gaoler shall be charged with this escape. But if a Prisoner be discharged (by Judgment) paying his Fees, if he escape, here the Gaoler is not chargeable. The difference is, the Prisoner in the first case was by Judgment committed to Prison; and in the last case he is adjudged to be acquit of his imprisonment, paying *&c.* and yet he is a Prisoner until he hath paid his Fees. *21 H. 7. 17. a. Br. Escape*

*11 H. 4. 17.*  
*Plow. 258.*  
*253. & 401*  
*Br. Esc. 17.*  
*16. Plow. 465.*

Note, that a voluntary escape is no Felony, if the act done were not Felony at the time of the escape made. As if *A.* do strike *B.* and hurt him mortally, whereupon the Constables do arrest *A.* and after willingly suffer him to escape, and after *B.* dyeth of that stroke: this escape is no Felony, either in the Constables or in the Prisoner; yet the Constables shall make a great Fine, yea, shall (or may, at the discretion of the Judges) be fined to the value of their goods (as it seemeth) by *11 H. 4. 12. and Stat. 35. b.* because this escape was voluntary.

'If a man be wounded, and the percussor is voluntarily let go at large by the Gaoler, and after death ensueth of the hurt; yet this is no Felonious escape in the Gaoler. *11 H. 4. 12. Ba. 38.*

*Cromp. 39* The voluntary suffering him to escape who hath killed another *se defendenda*, or by misadventure, or of him that hath committed petty Larceny, seemeth not to be Felony; for that these Offences are no Felony of death; but he that suffereth such an escape shall be fined only. *Cromp. 39.* Yet *Quere*, for they that suffered this escape, are not to Judge whether these Offences be Felony or no. See hercof *posse, tit. Evidence against Felons.*

A man was taken for suspicion of Felony, and was delivered to the Constable of *G.* and after escaped for want of good keeping, and the Constable was therefore taken and arraigned; and pleaded, That so far as the Felon was not taken with the manner, nor at the Suit of the party, nor indicted of Felony, therefore it was no escape, *&c.* And so was the Opinion of the Court then. See *42 Aff. P. 5. Br. Escape 39.*

But the contrary was after holden in case where the escape was voluntary, although the Prisoner were taken only upon suspicion, *44 Aff. p. 12. Br. Escape. 31 & Dyer 99.* that it is Felony, although the Prisoner were not indicted of Felony.

*4 Ed. 104.*  
*P. Escape 2*  
*Stat. 35.*  
Note also, where one is a Prisoner by Arrest only, and he doth escape, there the escape shall be presented before the Justices of Peace, or other Justices having Authority to enquire of the escape, before he that suffered the escape shall answer it, *sc.* before any thing shall be taken or levied by the Sheriff or other Officer. *Vide Co. 11. 64. 65. & Stat. Westm. 1. c. 4.*

*11 H. 7. 7.*  
*Cromp. 40*  
*P. R. 151.*  
*152.*  
*Cro. 34.*  
Note also, if a man be arrested for suspicion of Felony by the Constable or other person, and after they shall have intelligence that there is no such Felony committed, here they may set the party arrested at liberty again, and they shall not be charged with the escape; for there can be no Felony where there is no Felony committed.

But

But if a man be slain, or that there be any other Felony committed, and one is arrested for the same Felony, or for suspicion thereof, though he that made the arrest shall after have intelligence and certain knowledge that the party arrested is not guilty of that Offence, yet he or any other may not set the party so arrested at liberty; for now he must not be delivered by any mans discretion, but by course of Law: otherwise it will prove a voluntary escape, and so Felony, or at least finable.

And yet if a Watchman shall take any man for suspicion of Felony, he may enquire of his good name and fame; and if he finds him to be of good name and fame, he may let him go. See the *Old Justice of Peace*, imprinted Anno 1559. fol. 13. But it were more safe for the Watchman to deliver such suspected person to the Constable, Justice of Peace, or to the Sheriff, according to the Statute of *Winchester*. See *hic antea*, tit. *Watch*.

If a Justice of Peace shall send for a Felon out of the Gaol, and shall deliver him without Bail, this seemeth to be a voluntary escape, and so Felony in the Justice; otherwise, where the Justice erreth *pro defectu scientie*, as to bail one that is not bailable, this is but a negligent escape.

If the Justice of Peace or Sheriff shall bail one who is not bailable, this is an escape, *Fitz. Escape* 4. & *Cor.* 246. *sc.* a negligent escape, if it be in ignorance, *ut supra* in *note* (10).

But if one that is brought before a Justice of Peace for suspicion of Felony, shall confess the Felony before the Justice, and yet he shall suffer the Prisoner to go at large without Bail, this is a voluntary escape, &c. *Vide Cro. 39.*

“*Blackmaile*, If any in the Counties of *Cumberland, Northumberland,*  
“*Westmorland*, shall take any Subject against his Will, and carry him out  
“of the County, or to any place within the County; or detain them, to  
“ransome them, or make a prey or spoil of their person or goods, or assist,  
“abet, or procure such Act; or take, or give any Money, Corn, Cattle,  
“or other consideration, commonly called *Blackmaile*, for protecting, or  
“defending any from such Thefts, or shall burn, or procure to be burned,  
“any Barn or Stack of Corn there. It is Felony. 43 *El.* 13.

*Now to proceed with Felonies by Statute.* CHAP. CLX. V. 107.

**S. I.  
Buggery.**

**B**uggery committed with Mankind or Beast is Felony (without benefit of Clergy) 25 H. 8. 6. 5 Eliz. 17. it being a sin against God; Nature, and the Law: and in ancient times such Offenders were to be burned by the Common Law, *Fitz. 269. b. Fi. lib. 2.*

One describeth this Offence to be *Carnalis copula contra naturam*:

• *hac per confusionem* { *Specierum*; sc. *home* ou *feme* ou *brute* *beast*.  
   { *Sexuum*; sc. *home* ou *home*, *feme* ou *feme*.

<sup>1</sup> Et ceo poet estre sans penetration: Car le use del corps despend le seede in  
<sup>2</sup> tiel cases, fait ceo Buggery deins ceo Stat. sans penetration: Et issint fuit tenu  
<sup>3</sup> in le case le Seign' A. come ieo oye.

§. 2.  
Burning.

**Burning of Houses and Stacks of Corn: *Vide postea.***

do If a man maketh a Bill or Writing, and layeth or casteth the same at another mans door, therein threatening to burn his House if he giveth not some Money, &c. this hath been taken to be Felony. See 6 H. 7. f. 13. a.



Br. Cor. 213. And *quere* what Statute it is that the Book meaneth. *Note*, By the Stat. of 8 H. 6. cap. 6. such Offence was made Treason, if after the Offender did burn the house; but that Stat. of 8 H. 6. standeth now repealed.

P. Fel. 22. Congregations and confederacies holden by Masons, it is Felony in the causers thereof, and finable in the Masons that come to such Congregations. §. 3. Congregation.  
3 H. 6. cap. 1.

P. Fel. 19. Cutting out of any the Kings Subjects Tongues, or putting out their eyes, of malice pretended, is Felony. 5 H. 4. 5. And for these the Offender shall lose his Life, Lands and Goods.

"If any person of malice forethought, and by lying in wait, shall cut or disable the Tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any member or limb, with intention to maim him, or disfigure him. It is Felony in them and their Abettors. 22 & 23. Car. 2d.

"Cloth, such as shall steal Cloth, or other Woollen Manufactures from the Tentors in the night time, and be Indicted thereof, shall lose the benefit of Clergy; But the Judge may order him to be Transported; which if he shall refuse to be, or shall return within Seven years, he shall be executed. 22 Car. 2d.

21 H. 8. 11. Cutting or breaking down of Powdike or other Banks in Marsh-land maliciously, is Felony. 2 & 3 Ph. & M. cap. 19.  
P. Fel. 36.

1 Jac. 12. 1. Conjuraton, or Invocation of any evil Spirit, for any intent, &c. or to be counselling or aiding thereto, is Felony without benefit of Clergy. §. 4. Conjuraton.  
P. Fel. 6.  
7. 1. See Exod. 22. 18. Dent. 18. 11. & Lev. 20. 27.

2. To consult, covenant with, entertain, imploy, feed, or reward any evil Spirit, to or for any intent or purpose, is Felony in such Offenders, their Aiders and Counsellors.

3. To take up any dead body, or any part thereof, to be imployed or used in any manner of Witchcraft, is Felony in such Offenders, their Aiders and Counsellors.

4. Also to use or practise Witchcrafts, Enchantment, Charm or Sorcery, whereby any person shall be killed, pined, or lamed in any part of their Body, or to be counselling or aiding thereto, is Felony: By the ancient Common Law such Offenders were to be burned. *Fit. 269. b.* See the Law of God against Witches, Exod. 22. 18. and against such as seek to Witches and Wizzards, Levit. 19. 31. & 20. 6.

5. Also the second time to practise Witchcraft, &c. thereby to declare where any Treasure may be found, is Felony.

6. Or where any Goods lost or stollen may be found.

7. Or where any Cattell or Goods shall be destroyed or impaired.

8. Or to the intent to provoke any person to love.

9. Or to the intent to hurt any person in their body, though it be not effected. All these are Felony, *sc.* the second Offence, and without benefit of Clergy.

Now against these Witches (being the most cruel, revengeful and bloody of all the rest) the Justices of Peace may not always expect direct Evidence, seeing all their works are the works of darkness, and no Witnesses present with them to accuse them; and therefore for their better discovery, I thought good here to insert certain Observations, partly out of the Book of Discovery of the Witches that were arraigned at Lancaster, Anno. 1612. before Sir James Altham, and Sir Edw. Bromley, Judges of Assize there, and partly out of Mr. Bernard's Guide to Grand-jury-men. §. 5. Witches

1 Sam. 28. 7. 1. These Witches have ordinarily a Familiar or Spirit, which appeareth to them sometimes in one shape, sometimes in another; as in the shape  
1 Chro. 10. 13. of

of a Man, Woman, Boy, Dog, Cat, Foal, Fowl, Hare, Rat, Toad, &c. And to these their Spirits they give names, and they meet together to christen them, (as they speak.) *Ber. 107. 113.*

2. Their said Familiar hath some big or little Teat upon their body, and in some secret place, where he sucketh them. And besides their sucking, the Devil leaveth other marks upon their body, sometimes like a blew spot or red spot, like a flea-biting; sometimes the flesh sunk in and hollow, (all which for a time may be covered, yea taken away, but will come again to their old form.) And these the Devils marks be insensible, and being pricked will not bleed, and be often in their secretest parts, and therefore require diligent and careful search. *Ber. 112. 219.*

These first two are main points to discover and convict these Witches; for they prove fully that those Witches have a Familiar, and made a League with the Devil. *Ber. 60.*

So likewise if the suspected be proved to have been heard to call upon their Spirits, or to talk to them or of them, or have offered them to others.

So if they have been seen with their Spirit, or seen to feed some thing secretly; these are proofs they have a Familiar, &c.

3. They have often Pictures of Clay or Wax (like a man, &c. made of such as they would bewitch) found in their house, or which they roast, or bury in the Earth, that as the Picture consumes, so may the parties bewitched consume.

4. Other presumptions against these Witches; as, if they be given to usual Cursing and bitter Imprecations, and withal use Threatnings to be revenged, and their Imprecations or some other mischief presently followeth, *Ber. 61. 205.*

5. Their implicate Confession: as, when any man shall accuse them for hurting them or their Cattel, if they shall answer, *You should have let me alone then; or, I have not hurt you as yet.* These and the like speeches are in manner of a Confession of their power of hurting. *Ber. 206.*

6. Their diligent Enquiry after the sick party, or coming to visit him or her unsent for; but especially being forbidden the house.

7. Their apparition to the sick party in his fits.

8. The sick party in his fits naming the parties suspected, and where they be or have been, or what they do, if truly.

9. The common report of their Neighbours, especially if the party suspected be of Kin, or servant to, or familiar with a convicted Witch.

10. The Testimony of other Witches, confessing their own Witchcrafts, and witnessing against the suspected, that they have Spirits or Marks; that they have been at their Meetings; that they have told them what harm they have done, &c. *Ber. 212. 223.*

11. If the dead Body bleed upon the Witches touching it.

12. The Testimony of the person hurt, upon his death.

13. The Examination and Confession of the Children (able and fit to answer) or Servants of the Witch, especially concerning the first six Observations: *sc.* If the party suspected have a Familiar, or any Teat, or Pictures; her Threatnings and Cursings of the sick party; her Enquiry after the sick party; her boasting or rejoicing at the sick parties trouble: Also whether they have seen her call upon, speak to, or feed any Spirit, or such like; or have heard her foretel of this mis-hap, or speak of her power to hurt, or of her Transportation to this or that place, &c.

14. Their

14. Their own voluntary Confession, (which exceeds all other Evidence) *sc.* of the hurt they have done, or of the giving of their Souls to the Devil, and of the Spirits which they have, how many, how they call them, and how they came by them.

15. Besides, upon the Apprehension of any suspected, to search also their houses diligently for Pictures of Clay or Wax, &c. Hair cut, Bones, Powders, Books of Witchcraft, Charms, and for Pots or places where their Spirits may be kept, the smell of which place will stink detestably.

Now to shew you farther, some signs to know, whether the sick party be bewitched.

1. When a healthful Body shall be suddenly taken, &c. without probable reason, or natural cause appearing, &c. *Ber. 169.*

2. When two or more are taken in the like strange fits in many things.

3. When the afflicted party in his fits doth tell truly many things, what the Witch, or other parties absent, are doing or saying, and the like.

4. When the parties shall do many things strangely, or speak many things to purpose, and yet out of their fits know not any thing thereof.

5. When there is a strength supernatural, as that a strong Man or two shall not be able to keep down a Child, or weak Person, upon a Bed.

6. When the party doth vomit up crooked Pins, Needles, Nails, Coals, Lead, Straw, Hair, or the like.

7. When the Party shall see visibly some Apparition, and shortly after some mischief shall befall him. *Ber. 173.*

But withal observe, with Mr. Bernard, *cap. 2.* that divers strange diseases may happen only from Natural causes, where he sheweth eight such several diseases; therefore, unless the Compact with the Devil be proved or evinced by evident marks or tokens as abovesaid, it is not to be supposed that the Devil is the agent.

And note, for the better riddance of these Witches, being duly proved to be such, there must good care be had as well in their Examinations taken by the Justices; as also in the drawing of their Indictments, that the same be both of them set down directly in the material points, &c. As,

That the Witch (or party suspected) hath used Invocation of some *Indict-  
ments*

Or, That they have consulted or covenanted with their Spirit.

Or, That they employed their Spirit, &c.

Or, That they have fed or rewarded their Spirit.

Or, That they have killed or lamed, &c. Some person, &c.

And not to indict them generally for being Witches, &c.

The difference between Conjuration, Witchcraft, and Inchantment, &c. is this, *scil.* Conjurers and Witches have personal conference with the Devil, or evil-Spirit, to effect their purpose. See *1 Sam. 28. 7.* &c. The Conjurers believe by certain terrible words that they can raise the Devil, and make him to tremble; and by impaling themselves in a Circle, (which, as one saith, cannot keep out a Mouse) they believe that they are therein insconced, and safe from the Devil, whom they are about to raise; and having raised the Devil, they seem by Prayers and Invocation of Gods powerful Names, to compel the Devil to say or do what the Conjuror commandeth him.

The Witch dealeth rather by a friendly and voluntary Conference or Agreement between him (or her) and the Devil or Familiar, to have his or



her turn served ; and in lieu thereof, the Witch giveth (or offereth) his or her Soul, Blood, or other gift unto the Devil.

Also the Conjurer compacts for curiosity to know Secrets or work Miracles ; and the Witch of meer malice, to do mischief, and to be revenged.

The Inchanter, Charmer, or Sorcerer, these have no Personal Conference with the Devil, but (without any Apparition) work and perform things (seemingly at the least) by certain Superstitious and Ceremonial Forms of Words (called Charms) by them pronounced ; or by Medicines, Herbs, or other things applied, above the course of Nature, and by the Devils help, and Covenants made with him.

Of this last sort likewise are Sooth-sayers, or Wizards, which divine and foretel things to come by the flying, finging, or feeding of Birds, and unto such Questions as be demanded of them, they do answer by the Devil, (or by his help) *scil.* they do either answer by Voice, or else do set before their eyes in Glasses, Crytal Stones, or Rings, the Pictures or Images of the persons or things sought for.

§. 6.  
*Imbezelling.*

Imbezelling of the Kings Majesties Ordnance, Armor, Shot, Powder, *P. Fel. 31* or other Habiliments for War, or Victuals provided for Soldiers, &c. if it be by any person having the charge or custody thereof, and to the value of twenty shillings, though at several times, it is Felony.

31 Eliz. 4.

Imbezelling of any Record, or parcel thereof, Writ, Return, Pannel, *8 H. 6. 12. P. Fel. 11.* Process, or Warrant of Attorney in the *Chancery, Exchequer, Kings-Bench, Common Pleas, or Treasury,* (by reason whereof any Judgment shall be reversed) it is Felony in the Parties, and in their Counsellors, Procurers or *Vide Co. 11. 33. b.* Abettors.

“ Clergy is taken away from such as offend against 31 Eliz. 4. As “ also, if any shall steal or imbezel any of the Kings Sails, Cordage, “ or Naval Stores, to the value of twenty shillings, and be found guilty “ by Verdict or Confession ; or will not answer directly, or stand mute, “ or be Out-lawed ; he shall suffer death, without benefit of Clergy.

“ The Judge may Reprieve the Prisoner, and order him to be transported ; which if he shall refuse to be, or shall return in seven years, he “ shall be executed. 22 Car. 2.

So the razing of such Record, is Felony (within the said Statute of 8 H. 6.) Yet if a Judge do imbezel or raze a Record ; this is but Misprision in the Judge. 2 R. 3. *Br. Cor. 174. & Treason 31.*

But it seemeth, the Justices of Peace have not to do with these two last sorts of Felonies, (*sc.* with imbezelling or razing of Records) for that these Felonies are committed to other Judges to deal with, by the same Statute of 8 H. 6. *P. Records 4. See before, tit. Felony.*

§. 7.  
*Egyptian.*

*Egyptian, sc.* if any person of the age of fourteen years, or above, shall call himself an *Egyptian*, or shall be in the company of such, or shall disguise himself in Apparel, Speech, or otherwise, like such, and shall be or continue in *England* one moneth, at one or several times ; it is Felony without benefit of Clergy. 1 & 2. Ph. & Ma. 4. See *Egyptians antra.*

Note, That these manner of Persons are besides all of them for the most part Thieves, Cut-purses, Couzeners, or the like ; and therefore the Justice of Peace shall do well to be careful, not only in the examining of them, but also to cause them to be well searched for Counterfeit Passes, stoln Goods, and the like.

§. 8.  
*Presenting.*

Every Person which shall acknowledge any Fine, Recovery, Deed enrolled, Statute, Recognizance, Bail, or Judgment, in the name of any other Person

Person not privy or consenting to the same, being thereof lawfully convicted, shall be adjudged a Felon without benefit of Clergy, &c. 21 Jac. cap. 26.

Forestalling or buying any Merchandise before they come to the Staple, &c. was made Felony by 27 Ed. 3. cap. 11. §. 8.

5 Elz. 14. P. cl. 26. Forging of Evidences, sc. of any Deed, Charter, Obligation, Bill, Release, or other Writing sealed, or of any Court Roll, or Will, or of any Acquittance; or to cause or assent to be made any such Forged Writing; or publishing any such Writing, knowing the same to be false: The second offence is Felony without benefit of Clergy. But it seemeth also, that the Justices of the Peace have not to deal with this, for that they cannot well take notice of the former Conviction. See Co. 9. 118. b. & *hic antea*, tit. Felony. §. 9. Forging.

Lamb. 127. Gaolers (by dures of imprisonment and pain) inforcing their Prisoner to become an Approver, (that is, an Accuser of others as Coadjutors with him in Felony;) this is Felony in such Gaoler, although the Appellee or Party so accused be acquit, or shall happen to die before he be arrested upon the Appeal, &c. Stamf. 36. 14 E. 3. 10. §. 10. Gaolers.

If a Gaoler shall only procure his Prisoner to appeal or accuse another of Felony, this is Felony by *scrope*. An. 18 Ed. 3. Abr. d' Ass. 75. & Fitz. Coron. 272. And yet the Statute of 14 Ed. 3. seemeth to extend only where the Gaoler shall do this by great dures or pain.

Also by *Britt. fol. 18.* if the Gaoler shall keep his Prisoner more strait then he ought of right to do, by reason whereof the Prisoner dieth; this is Felony by the Common Law in the Gaoler. And herein the Book called *Speculum Juristicar.* agreeth with *Britton*. And yet by the Statute of *Westm. 1. cap. 12.* Notorious Felons, and such as be openly of evil name, or which be Rebellious, they shall have strong and hard imprisonment.

34 E. 3. 22. 37 E. 3. 19. P. Fel. 20. Hawks: Whosoever findeth any Hawk that is lost, if he shall not immediately bring the same to the Sheriff of the same County to be proclaimed, &c. But doth imbezil and carry away the Hawk, it is Felony. §. 11. Hawks.

P. Hawks. 1. Vide. So it is in him whosoever taketh up any Hawk, and concealeth the same from the owner, or his Falkner; or that taketh away any Hawk from the owner, or stealeth any Hawk and carrieth it away, not observing the aforesaid Ordinance.

1 H. 7. 7. P. Felon. 24. Lamb. 271. Dyer 50. Hunting of any Deer or Coneys in any Park, Forest, or Warren, unlawfully in the night time, or with Vizards or other disguises, and (upon Examination by a Justice of Peace, &c.) to conceal the offence, or any offender therein, is Felony in such Concealer: But if such offender (upon his Examination) shall confess all the truth, then he is but fineable. See hereof, *antea*, tit. Hunting. §. 12. Hunting.

If any person to be arrested for such offence shall disobey the Arrest, or if any person shall make Rescous, so that the Warrant (of the Justice of Peace) &c. for arresting them be not executed, it is Felony.

*Quere*, If such Hunting and Concealment, or Resistance, be Felony where the offenders killed no Deer, &c. It seemeth not; for all the Precedents do run, *Occiderunt & asportaverunt*, &c. See *Lambert, Crompt. & Westm.*

Also *Quere*, If all such Hunting disguised, or any other unlawful Hunting in the night time, be not Felony; although the offender be never examined thereof, nor conceal the same, as aforesaid. See the Statute 1 H. 7. cap. 7. in fine, where it seemeth, that all unlawful Hunting in the night (generally) is Felony.

If any Person shall take a tame Beast, or other thing in a Park, by manner of Robbery, it is Felony; and the Statute seemeth to be but an Affirmance of the Common Law in this point. 3 Ed. 1. 20.  
P. Fel. 24.

§. 13. Imprisonment. Imprisoning, or taking against their Wills (without lawful Authority) any Subject in Cumberland, Northumberland, Westmerland, and the Bishoprick of Duresm, and carrying them away to make a prey of them: 43 El. 13

Or, to be Privy, Consenting, Procuring, Aiding, or Assisting thereto:  
Or, to receive, carry, or give any consideration (called *Blackmail*) for Protection therein:

Or, to burn any Barn or Stack of Corn there; or, to be aiding, procuring, or consenting thereto.

Every of these offences is Felony without benefit of Clergy, 43 Eliz. cap. 13.

§. 14. Bigamy. Marriage: *sc.* If any Person, being married, shall marry a second Husband or Wife, the first being alive, &c. it is Felony; except notwithstanding where the Husband or Wife have been absent seven years, and the one not knowing the other to be living within that time; except also persons Divorced, &c. by Sentence in the Ecclesiastical Court; and except persons marrying within the age of consent. 1 Jac. 11.  
P. Fel. 4.

§. 15. Multiplication of Money. Multiplication of Gold or Silver, or to practise that Art, is Felony. P. Fel. 21.  
5 H. 4. 4. Vide Dyer 18. Pl. 105.

Money called Galley Half-pence, Suskin, or Dotkin, and all Scottish Money of Silver, to bring and put in payment any such, was made Felony by the Statute of 3 H. 5. 1. & 2 H. 6. 9. But they are now out of use.

§. 16. Piracy. Piracy. Concerning this offence, see the Statute of 28 H. 8. c. 15. & *hinc antea, tit. Petty Treason.*

§. 17. Plague. Plague. *sc.* If any Person being infected with the Plague, and being commanded by any Officer to keep his house, shall notwithstanding go abroad, and converse in company, having an infectious Sore upon him; it is Felony. 1 Jac. 3.  
P. Fel. 3.

§. 18. Poysoning. Poysoning. *sc.* Wilful killing of any Person by Poyson, is wilful Murder in the offenders, their Aiders, Abettors, Procurers, and Counsellors. P. Fel. 31.  
P. Mur. 4.  
1 Ed. 6. 12. Co. 11. 31. But the party poysoned must die thereof within a year and a day after the Poyson received. See *antea*, in the title *Murder*.

§. 19. Popish Priests, And Recusants. Popish Priests: To receive, relieve, aid, or maintain any such, &c. is Felony. Here *antea, tit. High Treason.* P. Jesuites 2.

Popish Recusants, and such other Recusants or Sectaries which (by the Statutes of 35 Eliz. 1 & 2.) are to abjure, if they shall refuse to abjure, or after Abjuration shall not depart the Realm, according as they shall be appointed, or after such departure, shall return again without the Kings special Licence in that behalf first obtained; it is Felony without benefit of Clergy. P. Fel. 4.

§. 20. Purveyors. Purveyors: *sc.* If any Purveyor, Taker, or other Person, their Deputies, or Servants, shall make any Purveyance, Takings, (or Prises) for the Kings Majesties House, of any thing above the value of Twelve pence (2 & 3 Ph. & Ma. c. 6.) in any of the six sorts following. See *tit. Purveyance.* P. Fel. 24.  
P. Purv. 30  
Lamb. 406  
Cromp. 48

1. Without Warrant or Commission under the Great Seal, and do carry the same away against the will of the owner, it is Felony. 28 Ed. 1. c. 2. 4 E. 3. c. 4. 36 E. 3. c. 2. (Which Warrant also they shall show to the parties, before they do take any thing from them.) P. Purv. 1-4  
23 H. 6. 13  
2.

And note, That no such Commission shall continue good, or be in force above six moneths, and they must be written in the English tongue; so that every Man may understand them. See the Statutes 36 E. 3. c. 2. 23 H. 6. c. 1. & 2 & 3 Ph. & Ma. c. 6.



2. Or having a Commission, shall buy or take (any thing) in other manner then is contained in their Warrant or Commission, *P. Purv.* 19. *Fel.*

25. *Raft.* 350. 36 *Ed.* 3. *cap.* 2.

3. Or shall take any Carriage in other manner then is comprised in their Commission. 36 *Ed.* 3. 2. *P.* 19. 23 *H.* 6. 1, 2.

4. Or having a Commission, shall take and carry away any thing (above the value of twelve pence,) and to the value of forty shillings or under, against the owners will, or not paying for the same presently according as they can agree with the Seller; or if the Buyer and Seller cannot agree, then to take any thing without being prized by the Constable and four Townsmen sworn, and by Indentures sealed by the Purveyor, &c. of the things so taken, &c. See the Statutes, 5 *E.* 3. 2. 10 *E.* 3. 1. 25 *E.* 3. 1. 36 *E.* 3. 2. 2 *H.* 4. 14. & 20 *H.* 6. c. 8.

And yet, if it be but of the value of forty shillings or under, some do hold, That in this last case the Purveyor shall only lose to the party grieved the treble value of his Goods so taken, and his costs, and treble damages; and that it shall be at the election of the owner of the Goods to recover his said damages and costs, &c. either against the Purveyor, or against the Neighbors, Apprisors, and Towns adjoining; which being required, shall not resist the Purveyor or Taker, doing contrary to the Statute. See the Statutes, 2 *H.* 4. 14. 20 *H.* 6. 8. & 23 *H.* 6. c. 1. & 2. But *quare*, for all those former Statutes do stand still in force, and be confirmed by these later Statutes, and by the Statutes made 2 & 3 *Ph.* & *Ma.* c. 6.

5. Or shall take more Victuals or Carriages for the Kings House then he shall deliver to the same House. 36 *Ed.* 3. *cap.* 4. *Fitz. Just.* of *P.* 114.

6. Or shall take any Sheep with their Woolls, between *Easter* and *Midsummer* at small prices, or more then be sufficient for the Kings House, and carry them to his own house and shear them. *Fitz. Ibid.*

In every of these Cases it seemeth to be Felony in such Purveyor, their Deputies and Servants. And yet a Purveyor or Taker, &c. may take Victual, or any such thing, according to his Commission, at reasonable prices, to the use of the Kings Majesty, and according to the Statutes, although it be against the will of the owner, *Br. Purv.* 1. But then he must take it by the Apprisement of the Constable and four Neighbors, &c. *Ut supra.*

And yet *quare*, whether the Apprisement shall be made by the Constables and four Neighbors, or by the Lords of the Towns, or their Bailiffs; and also, whether the said Indentures shall be made and sealed between the Purveyors and owners, or between the Purveyors and Apprisors, &c. for therein the said Statutes do somewhat differ.

But if a Purveyor shall take any Provision for the Kings House by force of his Commission, and shall after sell away the same. Now his first taking is become tortious, and he punishable as a Trespasser, if not as a Felon, *ab initio.*

If the Kings Hunters, or Falkners, shall take any thing against the owners will, without paying for the same presently, it seemeth to be Felony. 36 *Ed.* 3. *cap.* 5.

If the Kings Purveyors, or Takers of Carriage, shall take any thing to spare another, they shall be imprisoned by the space of two years, forswear the Court, and pay treble damages to the party grieved. 36 *Ed.* 3. *cap.* 3.

If any Subjects Caterer, or other Officer, shall take any Victuals, Corn, Hay, Carriage, or other thing against the owners consent, or do not pay

for it presently, it is Felony. *P. Purv.* 1. See 23 H. 6. c. 14. here before, *tit. Purveyors.* 'And *quere*, if the Felony of such Caterer be not altered 'herein by that Statute.

§. 21. *Rebels.* Rebellious and unlawful Assemblies of any Persons, to the number of twelve or above, &c. their Procurers or Relievers, it was Felony in them all. <sup>1 M. c. 12. P. Fel. 27.</sup>

§. 22. *Rogues.* Rogues being by the Justices of Peace, at their Quarter Sessions, adjudged incorrigible and dangerous, and therefore by them banished this Realm; if they shall return again into any part of this Realm without Licence, it is Felony. <sup>39 El. 4. 31. Fel. 34.</sup>

Rogues adjudged (as aforesaid) incorrigible or dangerous, shall by the judgment of the same Justices, in their open Sessions of the Peace, be branded in the left shoulder, &c. And after such punishment, if any so punished shall offend again in begging or wandring, contrary to the Statute of 36 El. 4. or 1 Jac. 7. it is Felony. <sup>1 Jac. 7. P. Vag. 4.</sup>

§. 23. *Robbing.* Robbing in the day time of any Dwelling-house, or of any Out-house belonging and used to, and with any Dwelling-house, or a \* Barn or Stable, &c. if it be to the value of five shillings, or above, although no person be therein; or to rob any house by day or by night, any person being therein, and thereby put in fear; or to rob any person in any part of his Dwelling-place, or house, the owner or dweller, his Wife, Children, or Servants, being therein, or in any place within the precinct of the same House or Dwelling-place, (sleeping or awaking;) or to rob any Booth or Tent in a Fair or Market, the owner, his Wife, Children, or any Servant being there within the same sleeping or waking :) Every of these offences are now by Statute made Felony, and as penal as Burglary, by the loss of the benefit of Clergy. But to break a house in the day time, although he hath a Felonious intent, yet if he carrieth away nothing; this is no Felony: For there must be Actual Felony done, besides the breaking of the house in the day. And by the report of Master *Dalison*, these \* Statutes shall be strictly construed (in favor of life) and according to the bare letter; so that if the Robbery be done by day, and there be in the house but one Servant only, or be in the House, Booth, or Tent, but a stranger or sojourner only, the Fact shall not be adjudged an offence against these Statutes, *Cromp.* 118. 'Co. 11. 36. But now by the \* Statute he shall not have his 'Clergy. <sup>39 El. 16. \* Co. 11. 36. P. Clergy 13. 5 Ed. 6. 9. Lamb. 403. 23 H. 8. c. 1. See Co. 116. 31. 32. 36. Stamf. 126. Lamb. 261. \* 23 H. 8. c. 1. 5 E. 6. c. 9. \* 39 El. c. 15.</sup>

§. 24. *Servants.* Servants imbezelling their Masters Goods. See herehf *antea*, *tit. Theft.* <sup>3 Jac. 4. P. Recus. 48.</sup>

*Soldiers.* *Scil.* If any Subject shall pass out of this Realm, to serve any Foreign Prince, &c. not having before their passing, taken the Oath of Allegiance, &c. before the Officer thereunto appointed, it is Felony.

If any Gentleman, or person of higher degree, or any Captain, or other Officer in Camp, shall pass out of this Realm to serve any Foreign Prince, &c. or shall voluntarily serve any Foreign Prince, &c. before they shall become bound to the Kings Majesty with two Sureties (before the Officer thereto appointed) with condition to this effect, *viz.* not to be reconciled to the Pope, &c. nor to make or consent unto any Conspiracy against the King, &c. but to disclose all Conspiracies upon knowledge thereof, &c. it is Felony. *Ibidem.*

Soldiers entered of Record, and having taken Prest-money, or parcel of their Wages of their Captain, if they shall not pass the Sea, or go with their Captain, or being in the Kings Service shall depart without Licence, it was made Felony by the Statute of 18 H. 6. c. 19. But see Co. 6. 27. that this <sup>18 H. 6. 106. P. Fel. 23. P. cap. 3. Co. 6. 27.</sup>

this Statute of 18 H.6. 19. is now of little force, for that the ancient manner of retaining of Soldiers, to which this Statute hath reference, is now altogether changed, &c. And yet if a Soldier who is retained, or hath taken any Prest-money, shall at this day depart out of the Kings service without Licence, it is Felony by the Statutes 7 H.7. 1. & 3 H.8. 5. Which two last mentioned Statutes are yet in force, and are Acts perpetual. *Co. ib.* And by the said Statute of 3 H.8. c.5. such Licence of departure must be made by the Kings Lieutenant.

Raft. 50. Soldiers, if they shall depart without Licence, after they have served in the Kings Wars, it is Felony without benefit of Clergy; none but the Lieutenant shall give a Soldier Licence to depart. 2 Ed.6. c.2. Co.6.27. See 4 & 5 Ph. & Ma. c.3.

If any Mariner or Gunner, having taken Prest-wages to serve the King on the Sea, shall not come unto, or shall depart from his Captain, without Licence, it is Felony. Yet *quare*, and see the Statute of 5 El. c.5. at large, for that it doth relate to the aforesaid Statute of 18 H.6. 19. which (as appeareth before) is now of little force.

39 El. 17. Soldiers and Mariners, and all idle persons wandering as Soldiers or Mariners, which shall not settle themselves to some lawful course of life, but shall wander up and down idly, or beg up and down, it is Felony in them without benefit of Clergy.

2. So it is if any idle or wandering Soldier or Mariner, coming from beyond the Seas, or from the Seas, shall not have a lawful Testimonial under the hand of some one Justice of Peace near the place of his landing, setting down therein the place and time of his landing, and the place unto which he is to pass, and a convenient time for his passage. 39 Eliz. 17.

3. Or having such Testimonial, if they shall wilfully exceed the time therein limited above fourteen days. *Ibid.*

4. Or if they shall forge or counterfeit any such Testimonial; or shall have any such forged Testimonial, knowing the same to be forged, &c. *Ibid.*

5. Or being retained into service after his Arraignment, &c. if he shall depart within the year without Licence of his Master. In all these former Cases it is Felony in such Soldier, &c. without any benefit of Clergy.

39 El. 17. "Justices of Peace may hear and determine these offences by Soldiers, "Mariners, and idle persons wandering, and shall execute the offenders "convicted before them, except some Subsidy-man, or honest Freeholder, "to be allowed by the Justices, will be content, before them, to take him "into service for a year, and be bound in a Recognizance of 10*l.* to keep "him a year, and to bring him to the next Sessions after the year: And if "he depart from his service, before the year ended, he shall be indicted, "tried, and judged as a Felon, and not to have his Clergy.

And yet see the Statute of 43 El. 3. that Soldiers and Mariners begging, or counterfeiting a Certificate from their Captain, shall be adjudged and punished but as Rogues. See *hic antea*, tit. Rogues.

8 El. 3. P. Fel. 1. Transporting or sending any live Sheep out of the Kings Dominions, §.25: the second offence is Felony. *Sheep.*

27 E.3. c. 3. 7. 12. R.18. It was made Felony for any Man to carry or to transport any Wools, §.26. Leather, Woolfels, or Lead, out of England, or Ireland; but see other Statutes since made concerning the same. 38 Ed.3. cap.6, 7. & 14 Rich. 2. cap. 1. & 5.

Witches. See *Conjuration*.

Women.



§. 27.  
Women,  
Rape.

Women. *Scil.* To ravish a Woman where she doth neither consent before nor after; or to ravish any Woman with force, though she do consent after, it is Felony; and the offender shall have no benefit of Clergy. 18 *El.* c. 6. *Br. Cor.* 204. *Vide Dyer* 202. 'That Man shall die, by the Law of God,' *Dent.* 22. 25.

'If a Man take away a Maid by force and ravish her, and after she giveth her consent, and marieth him, yet it is a Rape.

Rape. See  
anct.

Now Ravishment is here taken in one and the same signification with Rape, which is a violent deflowering of a Woman, or a carnal knowledge had of the Body of a Woman against her will. 9 *Ed.* 4. 36. *Fl.* l. 2. & *Co.* L. 123.

A Woman that is ravished, ought presently to levy open Hue and Cry, or to complain thereof presently to some credible persons, as it seemeth. *Stamf.* 22. *Crom.* 100. *Glanville* 115. See the Statute *De Officio Coronatoris*, 4 *E.* 1.

*Fleta* saith, That the complaint must be made within forty days, or else the Woman may not be heard, *Lib.* 3. c. 5. But in *Scotland*, and some other Countreys, this ought to be complained of the same day or night that the Crime is committed, (*ut dicitur* :) The reason is, *Quia lapsu diei hoc crimen præscribitur.* *Minsh.* and *Dr. Cowel.*

'And yet in an Indictment of Rape there is no time of prosecution necessary, for *Nallum tempus occurrit Regi.* But in case of an Appeal of Rape, if the Woman doth not prosecute it in convenient time, she shall be barred.

If a Woman at the time of the supposed Rape, do conceive with child by the Ravisher, this is no Rape; for a Woman cannot conceive with child except she doth consent. *Britt.* 45. *Stamf.* 24. *Finch.* lib. 2.

And yet if a Man ravish a Woman, who consenteth for fear of death or dures; this is Ravishment against her will, for that consent ought to be voluntary and free. *5 E. 6. Br. Parl.* 55.

All such as are present, abetting, aiding, or procuring another to commit a Rape, are principal Felons.

'If a Man and a Woman be present, with purpose that the Man shall by Violence carnally know the Body of another Woman there also present, against her will, and the Man doth the Fact in the presence of the other Woman, she so present (as well as the Man) shall be a principal Ravisher; the Man the Agent, and the other Coadjutant: And so one Woman may be a Principal to the Ravishment of another. *Dod.* 138.

It is a good Plea in an Appeal of Rape, to say, That before the Ravishment supposed, she was his Concubine, as Mr. *Bracton* saith. *Stamf.* 24.

And yet to ravish an Harlot, against her will, is Felony; for *licet Meretrix fuerit ante, certe tunc temporis non fuit, cum nequitia ejus reclamando consentire noluit.* *Bract.* l. 2. *Crom.* 47.

§. 28. Also to take any Maid, Widow, or Wife (having Lands or Goods, or being Heir apparent to her Ancestor) against her will unlawfully, is Felony; and to receive any such Woman so taken, knowing thereof, or to procure and abet the same, is Felony; and they shall all be reputed as Principals: And as well the Principals as Accessaries before the offence shall all lose the benefit of Clergy, 39 *El.* c. 9. *3 H. 7. 2. P. Fel.* 16.

But this Act doth not extend to any person taking any Woman, only claiming her as his Ward or Bond-woman.

The taking away of a Maid under sixteen years of age, without the consent of her Parents or Governors, or contracting Marriage with her, or deflowering her, is no Felony; but yet shall be punished with long imprisonment without Bail, or with grievous Fine. *4 & 5 Pl. & M. P. Women* 7. 8. *See Co.* 3. 37, & c.

But

18 El. 7.  
P. Fel. 14.  
But unlawfully and carnally to know and abuse any Woman child under the age of ten years, is Felony; although such Child consents before, *Gromp. 47.* and the offender shall have no benefit of Clergy.

13 Alf. 6.  
Br. Cor.  
77.  
Scamf. 94.  
Cromp. 35.  
Also to take away a Mans Wife with the Goods of her Husband, whether it be against her will, or against her Husbonds will, seemeth to be Felony by the Statute of *Westm. 2. cap. 34.* the words thereof are, *De mulieribus abductis cum bonis virorum suorum, habeat Rex scētam de bonis sic asportatis.*

3 Cor. 4.  
35.  
Scamf. 27.  
But if the Wife take her Husbonds Goods, and so goeth away voluntarily with another Man, and with those Goods, or delivereth those Goods to another Man; these two last cases seem not to be Felony.

If any Woman be delivered of any issue of her Body, Male, or Female, which, if it were born alive, should by the Laws of this Realm be a Bastard, and that she endeavor (privately, either by drowning, or secret burying thereof, or any other way) so to conceal the death thereof, that it may not come to light, whether it were born alive or not; but be concealed; in every such case, the said Mother so offending, shall suffer death as in case of Murder, except she can prove that the Child was born dead. 21 Jac. cap. 27. §. 29. Bastards.

Now the Mothers proof that her Child was born dead, must be by Witnesses: And therefore, if the Mother will call for no help at the time of her Labor, but secretly be delivered, and then the Child be found dead, it is a strong presumption against her, that she murdered it; and the rather, for that it is a received opinion, That if the Child were dead in her body, she could not then be delivered without the help of some others. Which opinion, notwithstanding some worshipful and grave Matrons have denied, and that of their own knowledge.

"If any in the night time, maliciously, or willingly burn or cause to be burned, or destroyed any Ricks or Stacks of Corn, Hay, or Grain, Barns, other Out-houses, or Buildings, or Kilns, or kill or destroy any Horses or Sheep; it is Felony, 22 & 23 Car. 2. §. 30. Burning.

"If any Person that shall be Convict or Attaint of that Felony to avoid Judgment of Death, shall elect to be transported to any Plantation, Judgment shall be entered, That he shall be transported, and there remain seven years; and the Sheriff shall convey him, and imbarke him for Transportation. And if he return within seven years, he shall die as a Felon. 22 & 23 Car. 2.

"If any Person shall in the night time, maliciously maim, wound, or hurt any Horses, Sheep, or Cattle, whereby the same are not utterly killed or destroyed, or shall destroy any Plantations of young Trees, or throw down any Inclosures, he shall forfeit treble damages to the party grieved, to be recovered by an Action of Trespas or Case at Common Law. 22 & 23 Car. 2. Cattle.

"Upon Complaint, any three Justices of the Peace (*Quorum unus*) may inquire by the Oath of Twelve Men, and by Examination of Witnesses, or other ways, as they shall think fit concerning offenders, and may issue out Warrants for Summoning a Jury, and for apprehending the parties; and to take their Examination, and to call all such persons as are likely to make discovery, and to examine them upon Oath; so as no person so examined, shall be proceeded against or convicted for such offence, touching which he is examined, and shall make a true discovery. And if any Person, thought likely to make such discovery, shall refuse to appear, or to be examined, he shall be sent to the Gaol without Bail, until he shall submit to be examined. 22 & 23 Car. 2.

"None

"None shall be punished by this Act, who shall be punished for the same offence by any other Act; nor shall be questioned, unless he be proceeded against within six moneths after the offence committed.  
*Ibidem.*

§. 31.

Exportation.

"If any export, transport, carry, or convey, out of *England*, or *Ireland*, into any parts out of those Kingdoms, or into *Scotland*, any Sheep or Wool, of the breed or growth of them, or any Woolfels, Mortlings, Shorelings, Yarn made of Wool, Woolflocks, Fullers Earth, or Fulling Clay; or shall pack, or load, or cause, &c. the same on any Horse, Cart, or Carriage; or Load, or lay on Board, or cause, &c. the same in any Vessel in *England*, or *Ireland*, with an intent to convey or cause, &c. out of *England* or *Ireland*, into *Scotland*, or any Foreign parts; it is Felony. 14 Car. 2. c. 18.

"Every owner of Ship, Vessel, Horse, Cart, or Carriage, upon which the same shall be laded to be exported; and every Master and Mariner of such Ship or Vessel, every Factor, Servant, or other Person, every Custom-er, Comptroller, Waiter, Searcher, Surveyor, and other Officer or Person knowing thereof, and wittingly consenting thereunto, shall be a Felon, and suffer as a Felon. *Ibid.*

"No Person shall be impeached for these Felonies, unless indicted within four year after such offence committed. 14 Car. 2. c. 18.

"The owner of the Ship, Master, or Mariner, knowing thereof, that shall within three moneths after his knowledge thereof, or return into *England* or *Ireland*, give the first information *Bona fide* before the Barons of the Exchequer, of *England* or *Ireland*, or the Head-officer of the Port, where he arrives, upon Oath, of the Goods conveyed; and by whom, where, and in what Vessel; and be ready upon notice by Process to justify the same, shall be excused of Felony, but liable to other Forfeitures. 14 Car. 2. c. 18.

## Accessaries. CHAP. CLXI. V. 108.

§. 1.

One describeth an Accessary, *Accessarius, quasi accedens ad culpam, & particeps culpæ*, as witting or knowing of it; another, *Accessarius etiam secundarius dicitur*.

In Treason.

In High Treason there be no Accessaries, for the Advisers, Counsellors, Perswaders and Assistants therein, as also the Receivers knowing thereof, be Principals, and as much as if they were Actors or Doers; yea, all that shall advise, counsel, perswade, command, procure, or hire another to do any Treason or Felony, (they being indeed the very cause of the Fact) may well seem as culpable, if not more, then the Principal Actor; for the Rule is, *Plus peccat author quam actor*. Examples also we have hereof, in the Book of God, *Gen. 3*. The Serpent; the procurer of the first sin, by Gods own Judgment, had a greater punishment then the Woman or Man. Again, *2 Sam. 12. 9*. David is told (from God) that he had killed *Uriah*, whereas he only commanded *Joab* to kill him, &c. Yet in case of Felony our Law is otherwise.

Note, Whatever offence doth make a Man Accessary in Felony, the same, or like offence, maketh him a Principal in High Treason. Stamf. 40.

But yet it seemeth this is to be understood of Accessaries before the Treason; for receiving, aiding, and comforting a Traytor after the offence (knowing the same) was holden to be but Misprision of Treason, Br. Cor. 135. Brian.



Dyer 296. 12 & 13 Eliz. Dyer 296. And yet by some other Authorities, the receiving of Traitors after the offence, knowing thereof, is holden to be Treason. See 3 H.7. 10. Br. Treason 19. Hussey Chief Justice, and Cromp. 42.b. who alledgeth the Book called *The Exposition of the Terms of the Law, tit. Accessaries.*

Sir Edw. Coke, l. 57. telleth us, That in the highest and lowest offences there be no Accessaries, but all are Principals: As in the highest offence, which is *Crimen læsæ Majestatis*, there be no Accessaries; and so in the lowest, as in Riots, Routs, Forceable Entries, and other Trespasses, *Vi & Armis.* §. 2.  
In what  
offences.

In cases of *Præmunire* there may be Principal and Accessary, by some opinions. 44 E.3. & 8 H.4. 6. b. Huls, Br. *Præmunire* 4. 6. *Tamen quare*, for these offences seem more like a Trespass than a Felony, &c. And upon the Statute of 27 E. 3. the offenders shall forfeit nothing, if they appear at the first day; but if they appear not at the first day, then (for their contumacy) they shall be out of the Kings protection, and shall forfeit their Lands and Goods to the King, which are as a pain given by the Statute; but it is no Attainder: Also, if the Principal appear not, or happen to be dead, yet the other shall answer; and therefore it seemeth that they be all Principals in cases of *Præmunire*. Br. *ibid.* 4.

In Petty Treason there is a Principal, and there may be Accessaries, as there is in Felonies.

In Felony there be two sorts of Accessaries.

The one is Accessary before the Felony committed.

The other is Accessary after the offence done.

§. 3.  
Two sorts  
in Felony.

But he that is present at the time of the Felony committed (be it in case of Murther, Robbery, Burglary, or Larceny) is a Principal at this day, if he were either a Procurer, or Mover, or Aider, Comforter, or Consenter thereto, although at that present he doth nothing. See before *Plo.* 100. a. 11 H.4. Br. *Coron.* 188. & 228. & *Indictment* 5.

And yet concerning Murther, note, that in every Appeal the count is, that every Principal *Luy comp' a. & ferust mortalment, &c.* But those words are but words of Form, and the striking of him which killeth the party, shall be adjudged the striking of all those which command, procure, move, aid, or consent thereto, when they be present; and they which give the stroke or wound may be termed Principals in Fact, and the other being present, Principals in Law. See *Plo. fol.* 97. b. & 100. a.

Scamf. 40.  
b.

If one being present at the killing or robbing of a Man doth nothing, yet would have aided his companion if there had been need, he shall be adjudged a Principal. *Fitz. Coron.* 309.

F. Cor.  
325.  
Scamf. 37,  
40. b.  
Crompt. 44  
& H. 7. 31.

But if one be present by chance, and seeth when another is slain or robbed, or when any other Felony is committed, and doth not come in company with the Felons, nor is of their Confederacy, although he doth not make any resistance, or disturb the Felon, or levy Hue and Cry, nor discovereth the same, but concealeth it; yet it is no Felony in him, but misprision of Felony, and finable as a Trespass. Misprision.

And he may be imprisoned by the Justice of Peace until he shall find Sureties to pay such Fine as shall be assessed upon him by the Justices, before whom the Cause shall be heard. See *Fitz. Coron.* 395.

Also in some Cases a Man may be a Principal, although he be not present at the time of the Felony committed; as if A. knowing drink to be poisoned, perswades B. to drink it, and after B. (in the absence of A.) doth drink it, and dieth thereof, A. is here a Principal Murtherer, *Co.* 4. 44. See other

other like Cases of Poysoning. *Antea, tit. Murder. Et postea, sub hoc tit. Accessaries.*

"Two Thieves, viz. *A.* and *B.* set upon *C.* and *D.* to rob them. *C.* flieth And. part  
"one way, and *A.* pursueth him, but robbeth him not. *D.* flieth another 1. p. 116.  
"way, and *B.* pursueth him, and robbeth him; adjudged by the whole  
"Court of *Kings Bench*, that *A.* is Principal in the Robbery of *D.* and was  
"hanged for it. *H. 26 El.*

Note, that the Accessary in Fact in Felony, whether before or after, though it be another offence, and distinct from the Principal Fact; yet it is also Felony, and they shall have the same punishment which the Principal shall have.

Note also, when a Statute maketh or ordaineth an act or offence to be Treason or Felony, which was not so before by the Common Law, and yet the Statute saith not that the Abettors, Aiders, Comforters, or Consenters to the doing thereof, shall be also Felons; yet it shall be Felony in them, for that they were the Causes of the doing or committing of the offence, which (it may be) otherwise had not been committed. See *Lamb. p. 279, 280. 19 H. 6. fol. 47. & 11 H. 4. fol. 13. Fitz. Coron. 228.*

And so it seemeth of Receivers, &c. after the offence, *Lamb. 281.* for where a Statute maketh any thing Felony, it is made as Felony to all Intents and Purposes.

§. 4.  
Kinds.

The Book called the *Mirror of Justices* maketh divers manner of Accessaries; *sc.*

Those which command.	} And so Murther, and other Felonies, may be comitted as well in words and in heart, as by outward Act.
Those which counsel.	
Those which consent.	} by outward Act.
Those which are partakers in the gain.	
Those which know thereof, and do not disturb or hinder the same.	
Receivers knowing thereof.	
And those which are present at the Fact. But these last (at this day)	

are Principals as aforesaid.

And now our Books do divide them into two sorts, *sc.* Accessaries before the Felony (or Fact,) and Accessaries after the Fact.

§. 5.  
Before the  
Fact.

Accessaries before the Felony, are such as shall will, command, hire, procure, move, conspire, counsel, abet, *sc.* Incurage or set on, or consent to commit any Petty Treason, Murther, Robbery, Rape, Burglary, or Larceny, but are not present thereat; yet all such are thereby Felons, when the Felony is committed. Præcipiendo, Persuadendo, Consulendo, Consentiendo.

But here note some differences are to be observed, when the Principal and chief offender or actor doth not accomplish the Fact altogether in the self-same sort, as it was before-hand agreed and plotted between him and the Accessary; and therefore if *A.* command *B.* to lay hold upon *C.* and *B.* goeth and robbeth *C.* This is no Felony in *A.* (if he be absent when the Robbery is done) for this Commandment might have been performed without any Robbery.

But if the Commandment had been to beat *C.* and the party commanded doth kill *C.* or beat him so that he dieth thereof, *A.* shall be accessary to his Felony and Murther; for it is hazard in beating a Man, that he may die thereof. F. Cor. 314.

*A.* commandeth *B.* to rob *C.* and in attempting this *B.* killeth *C.* *A.* shall be Accessary to this Murther; for in attempting to rob *C.* the Commandment of *A.* was pursued, and then when the Commandment is pursued, and in the Execution thereof another thing falleth out, he which gave the Command- Plo. 479.

Commandment shall be adjudged a party thereto, for that his Commandment was the cause thereof. *Plo. 475.*

He that commandeth or counselleth any evil or unlawful act to be done, shall be adjudged Accessary to all that shall insue upon the same evil act, but not to any other distinct thing. *Ibid.* As if

*Plo. 475.* A. commandeth B. to steal a Horse, and he stealeth an Ox, or to steal a White Horse, and he stealeth a Black; or to rob a Man by the High-way of his Money, and he robs him in his House of his Plate; or to burn the house of B. and he burneth the house of C. These be other Acts and Felonies then A. commanded to be done, and therefore A. shall not be adjudged Accessary to them.

But if B. shall commit the same Felony which A. did command or counsel to be done, though he doth it at another time, or in another place; or in another sort then A. did command or counsel, yet here A. shall be Accessary thereto; for *Mandata illicita recipiunt latam & extensam interpretationem. Vide Pa. 66, 67.*

*Ibid.* As if A. doth counsel B. to kill C. by Poyson, and he killeth him with his Dagger, or by other violence; or to kill C. by the High-way, and he killeth him in his House; or to kill him one day, and he killeth him upon another day. In these, and the like cases, A. shall be Accessary to the Murther.

*Lamb. 283* A. counselleth B. to poyson C. and to that end, A. buyeth Poyson, and delivereth it to B. who tempereth it in an Apple, and delivereth it to C. with intent to poyson him; and C. knowing nothing, giveth the Apple to E. who eateth it, and dieth thereof. Here A. is not Accessary to the Murther of E. yet it is Murther in B. *Plo. 475, 476.*

A. counselleth or commandeth B. to kill C. and after, and before he hath killed him, A. doth repent him; and countermands it, charging B. not to kill C. and yet after it, B. doth kill C. Here A. shall not be adjudged Accessary to the death of C. for the Law adjudgeth no man Accessary to a Felony before the Fact, but such as continue in that mind at the time that the same Felony is done and executed. *Plo. 475.*

*Dyer 186.* But if A. counselleth a Woman to murther the Child in her Body (when it shall be born,) and after the Child is born, and then the Midwife or other person, in the presence of the Mother, and by her commandment, killeth the Child; although it be done in the absence of A. yet he is Accessary by his counselling it before the Birth, and not countermanding it. *Dyer 186.*

*Lamb. 285* A Man foreknoweth of a Felony intended to be done, and doth conceal it, and so suffereth it to be effected: This maketh him no Accessary to the Felony, except he consenteth thereto; but such Concealment seemeth to be only Misprision of Felony, and fineable. And yet the Rule is, *Qui non prohibet, quod prohibere potest, consentit. Ideo quere.* And *Bracton*, fol. 121. speaking of Murther saith thus, *Ille, qui cum posset hominem a morte liberare, non liberabit, immunis esse non debet a pena.*

*Moore's Rep. p. 461.* Note, That in Manslaughter there can be no Accessary before the Fact, for Manslaughter is upon a sudden falling out.

*Moore's Rep. p. 666.* "See also in Forgery made Felony, by the Statute all are Principals.

*Booth's Case.*

*Co. 4. 44.* Note also, That none shall have Clergy who maliciously commandeth, hireth, or counselleth any person to commit any Petty Treason, or wilful Murther, or to do any Robbery. 4 & 5 Ph. & Ma. c. 4. See *Dyer 183, 186.* & *Co. 11. 35.*



Also none which is Accessary before the Fact, to any Felonious Burning of any Dwelling-house, or any part thereof, or Barn with Corn, shall have any benefit of Clergy. 1 E. 6. cap. 17. 4 & 5 Ph. & Ma. cap. 4. See Co. 11. *Poulsters Case.*

No Horse-stealer, nor Accessary thereto, either before or after such Felony done, shall have any benefit of Clergy. 2 E. 6. cap. 33. & 31 El. 12. *Stamf. 411*

§. 7.  
After the  
Fact.

Accessaries after the offence, are they, who knowing that another hath committed a Felony, do feloniously or voluntarily receive or harbor him, or relieve, assist, comfort or aid him, whether it be before the Attainder of the Felon, or after his Attainder. *Br. Indictment 4.*

As to comfort or relieve a Felon (before he is attainted) with Money, Meat, Drink, or Lodging, knowing of the Felony, maketh one Accessary. 26 Aff. Pl. 47.

So to lend him a Horse to go his way withal, or otherwise to be a means of his Escape. *Fitz. Coron. 427.* *Ibid.*

But to relieve him being in Prison, maketh not a Man Accessary: *Br. Cor.* Also to aid him by his good word, or sue for his Deliverance, or to send a Letter for his enlargement; this maketh not a Man Accessary to the Felony. *103. Finch.*

A Felon that goeth under Bail, and stands bound to appear for his Tryal; to receive, harbor, or relieve such a one with Money or Victual, breedeth no danger of an Accessary, because the Felony in these last cases cannot be concealed, nor the Tryal hindered by it. *Lamb. 384. Cromp. 41*

A Felon getteth his Pardon; such as shall receive or relieve him after shall not be accounted Accessary; but to receive or relieve him before his Pardon obtained, is Felony. See *Pl. 476.* Yet it seemeth upon this Pardon, such Accessary before shall be discharged.

A Felon is attainted by Verdict, Confession, or by Utlary; to receive, harbor, or relieve such a one, by any person dwelling in the same County where the Felon is attainted, it maketh such Receiver, or Aider an Accessary to the Felony, although such Receiver, &c. did not know of the Felony; because by the Attainder of the Felon, he is a Felon of Record, whereof every person dwelling in the same County is to take notice. Yet Master *Bracton* requireth a more direct knowledge in the parties to make them Accessaries: For albeit a Record (and specially the pronouncing of an Utlary in the County Court) be so notorious, that every Man may easily come to know the same; yet were it an over-great extremity, that every Man should (upon the peril of his own life) take certain knowledge thereof. Which opinion of Mr. *Bracton*, Mr. *Lambert* also holdeth to be very reasonable. *F. Cor. 377. Stamf. 96. Dyer 339. Lamb. 384*

But a Felon attainted by Verdict, Confession, or Utlary, in one County, if another doth receive or aid him in another County; this maketh such Receiver or Aider no Accessary to the Felony, unless he did also know of the Felony. *F. Cor. 375. Vi. Stamf. 41.*

Feme Co-  
vert.

If a Feme Covert shall relieve, or receive and keep company with her Husband, knowing him to be a Felon, she is no Accessary thereby: For a Woman Covert cannot be Accessary in Felony to her Husband, for she ought to relieve him, and not to discover his counsel. But *quere*, if this be not to be understood of Accessary after the Fact; for if the Wife shall procure, counsel, or conspire with her Husband to commit any Felony, and the Husband thereupon shall execute the same, although the Wife be not present thereat, yet the Wife may seem to be Accessary to her Husband in such case; for Mr. *Bracton* saith, *Uxor virum accusare non debet, nec detegere*

*Furtivum*

*Furtum suum neque Feloniam; consentire tamen non debet Feloniae viri sui, neque esse coadjutrix: Stamf. 26.*

Also if the Wife receiveth, &c. Another Felon, she is an Accessary.

A Servant may be Accessary to a Felony committed by his Master or <sup>Servant</sup> Mistress, *sc.* By relieving or aiding them, or otherwise by being a means of their escape, as it seemeth: For Mr. *Braſſon* saith, *Concubina & famula domus non sunt in eodem casu quo uxor; ipse enim accusare tenentur, aut recedere a servitio, alioquin videntur consentire. Stamf. 27. a.*

A Servant knowing his Master to be a Felon, continueth to do him Service; the Servant is thereby an Accessary. *Let. M. Cook.*

The Master knowing his Servant to be a Felon, still keepeth him in his Service; the Master is thereby an Accessary. *Ibid.*

See Stamf.  
42. c.  
such a  
matter.

A Felon fled to the house of his Natural Brother, and the Brother shut the fore-door against the Pursuers, and conveyed the Felon out of his house at a back-door, whereby he gat to the Church: This Brother was adjudged an Accessary for it, for he was a means of the escape.

*Quere,* If a Felon flieth and cometh to his Friends house; and his Friend shutteth the door against him, and yet maketh the Pursuers believe that he is in the house, whereas he escapeth, if this make not the Friend an Accessary.

9 H. 4. 1.  
Br. Cor. 26  
See Br.  
Elic. 43.

A Man hath a Felon in his house, and (knowing of the Felony) suffereth him to go his way, and so to escape; yet this is no Felony, for that he had not arrested him of the Felony before: Neither can such an escape make him an Accessary, except he were any means of the escape.

1 H. 7. 6.

If one do rescue him that is arrested for the Felony, he is a Principal Felon, and not an Accessary.

§. 8.  
*Rescous.*

Stamf. 43.  
c.  
12 Aff. 69.  
9 H. 4. 1.  
Stamf. 43.  
h

Receiving or buying of Stolen Goods, knowing they were stolen, maketh not a Man Accessary to the Felony, unless he receiveth also (or aideth) the Felon himself; yet Mr. *Crompton* maketh a *quere* thereof, and alledgeth some cases to the contrary. See *Crompt. fol. 41, 42, 43.* But it was adjudged, *T. 44 El. B. R. Dawsons Case.* That it maketh no Accessary. *Telvert. pag. 4.*

Buying  
Stolen  
Goods.

But herein there seemes a difference between a Buyer, being a stranger to the Felon, and who for valuable consideration shall buy such Goods; and a Receiver or Buyer who is an adherent or companion to the Felon, or that by Covin shall receive or buy such Goods. See the Preamble to the Statute 2 & 3 Ed. 6. cap. 24.

Crompt. 43

A Man buyeth Stolen Goods for five shillings, which are worth twenty shillings, this maketh the Buyer an Accessary, by the opinions of Mr. *Crompton*: *fol. 43.* and of Sir *Nich. Hide* in his Charge at Lent Assizes at Cambridge, 1629. For it may well appear by the price, that the Seller came not truly by them; and therefore it is safe to lay hold upon such Sellers as shall sell any thing at any great undervalue.

Br. Cor.  
112.  
Lamb. 282  
Crompt.  
374. 1. 42.  
P. R. 131.  
Terms of  
the Law,  
184.  
Dyer 50.  
Fitz. Cor.  
313.

A Man pursueth and taketh a Felon that hath stolen his Goods, and then taketh his Goods again, and suffereth the Thief to escape: He is no Accessary thereby, (by some Opinions) for he may *in initio agere civiliter*, or *criminaliter*, at his pleasure, as Mr. *Braſſon* writeth, *Stamf. 28. Quere tamen.* For Mr. *Stamf. fol. 40.* and Mr. *Finch, lib. 2.* say, That if he take his Goods again from the Felon to favor him; this is Theft-boot, (the punishment whereof in ancient time, was of Life and Member, though at this day it be punishable only by Ransom and Imprisonment.) And yet by some it is holden to be Felony at this day. The like seemeth to be, if he take his Goods again from the Felon, and then favoereth him, and letteth him go. See the *Mirror of Justices, lib. 2. & Fleta, lib. 1. cap. 27.*

§. 9.  
*Taking  
again Stolen  
Goods.*

But if the Party robbed take Money or other Goods, &c. of the Thief, to the end, he shall favor him, or shall not give Evidence against him, whereby the Thief escapeth; now is he an Accessary to the Felony of his own Goods, by Good Opinion: Though some other seem to take this for Theft-boot, and so to be punishable at this day only by Ransom and Imprisonment, as aforesaid. 6 E. 6.  
Lamb. 186  
Crown p. 41  
P. R. 131  
Br. Cor.  
1:2.

If the Party robbed, or if he that shall have any Goods stolen from him, after complaint by him made of the Felony (to a Justice of Peace, or to the Constable) shall then take his Goods again, or otherwise be compounded withal, and will not prosecute this matter against the Felon any farther, but will suffer him to escape after he was once so charged, and perhaps arrested for the same. *Quere*, if this maketh not him an Accessary, for that he did once *agere criminaliter*, by complaint made to the Officer against the Felon.

I think in such case the Justice of Peace shall do well (at least) to bind over both, the one and the other to the next Quarter Sessions, or to the next Gaol-delivery, and then to acquaint the Court with the whole matter.

But if upon Hue and Cry, a Man do Arrest a Thief that hath stolen another Mans Goods, and do then take the Goods from the Felon, and so let him go; this maketh him an Accessary to the Felony, if not a Principal Felon. 27 Aff. 2.  
Lamb. 185

*Nota que pur biens embles, ou imports, la party poit aver son Action de Trespass, & apres Apell de Robbery. Co. 4. 43.*

§. 10.  
Time.

Also note, in all cases of an Accessary after the Fact, it is requisite that the Fact (to which he is an Accessary) be a Felony at the very time in which he becometh an Accessary to it: For if *A.* giveth a mortal wound to *B.* upon the first of *March*, and *C.* knowing thereof, receiveth, &c. *A.* two or three days together, and letteth him go, and after *B.* dieth of the wound within the year; yet this Receipt, &c. maketh *C.* no Accessary, because the Principal Fact was no Felony at the time, either of the Receipt, or of the letting him go. Stamish

By the Statute of 2 Ed. 6. c. 24. Accessaries may be to a Felony done in another County: Where as before the Statute of the Common Law laid no hold of such Accessaries for that those in another County, upon the Tryal, could not have Cognizance of the principal offence, &c.

But now by the said Statute, there shall be a Certificate from the *Custos Rotulorum* of the County where the Principal shall be attainted or convicted, &c. See *antea*, tit. Felony.

Rule.

Note, That if an offence be made Felony by Statute, although the same Statute doth not expressly make mention of Procurers, Counsellors, Abettors, Receivers, Consenters, and Aiders, &c. yet they shall be taken as Accessaries (within the compass of the same Statute) even in the same manner, as if it were Felony at the Common Law. Lamb. 185  
Stamf. 44

§. 11.  
Accessory  
of Accessary.

A Man may be an Accessary to an Accessary; as if he shall receive, relieve, relieve, or comfort him who is Accessary to a Felon, knowing the same, *Br. Cor.* 104. 26 Aff. 12.  
F. Cor. 190

§. 12.

Although the Accessary shall be punished, and shall have Judgment of life and member, as well as the Principal which did the Felony; yet the Principal, (yea, all the Principals) ought first to be attainted (by Verdict, Confession, or Utlary) before the Accessary can be charged, or put to answer (as an Accessary;) and the acquittal of the Principal, is the acquittal of the Accessary; for *ubi non est Principalis, non potest esse Accessarius*; but yet the Accessary shall be attached, and surely kept, (and be committed by the Justice



Justice of Peace, &c.) until the Principal be attached and attainted. See *Westm. 1. cap. 14.*

But though the Accessary in Felony cannot be proceeded against, until the Principal be tried, yet if a Man upon subtilty and malice, set a Madman by some device to kill another, and he doth so; now for as much as the Madman is excused, because he can have no will or malice, the Law accounteth the Inciter as Principal, though he be absent, rather then the Crime shall go unpunished. 33 *Eliz. Ba. 57.*

And if the Principal be attainted, though erroneously, that shall not avail the Accessary, but he must answer, &c. *Ca. 9. 68. b. & 119.*

Co. 4. 43.  
44.  
P. Cor.  
166. &  
178.  
Vide Br.  
Cor. 70, 71,  
80, 83, 86,  
132, 133.  
Crompt.  
34. b.

If the Principal die before he be attainted, or if the Principal be found not guilty by Verdict, or be found by Verdict that he slew the other in his own defence, or if after Conviction by Verdict, Confession, or Uttery, and before Judgment, he hath his Clergy, or getteth his pardon, the Accessary in all these Cases shall be discharged: But it is not safe for the Justice of Peace to discharge such Accessary out of Sessions.

A Man killeth another *Se Defendendo*, or by Misadventure, and it is so found upon his Tryal; the Accessary shall be discharged. For that in these Cases the Principal shall not have Judgment of Death. *Et omne Accessar. sequitur suum Principale.* See *Br. Forf. 13.*

#### Rules concerning Felony. CHAP. CLXII. V. 109.

1 E. 6.  
Br. Cor.  
178.  
13 E. 4. 9.  
Br. Forf.  
Sut. 5.

**I**F a Man committeth Felony in the time of one King, he may be charged and arraigned for it after, in the time of another King.

If a Man do commit Murther, steal Goods, or do any other Felony in one County, and then flieth into another County, and is taken there, and brought before a Justice of Peace there, he shall be (by the Justice) imprisoned in the Gaol of the County where he is taken; and after shall be removed by the Kings Writ into the Gaol of the County where he committed the Felony. But for those that do inform against such Felons, the said Justice shall bind such Informers over to appear, and to give Evidence against such Felons, at the next General Gaol-delivery, to be holden in that County where the Tryal of such Murther or Felony shall be; whither also the said Justice must certifie such Information taken by him.

4 H. 7. 5.  
34 H. 8.  
Br. Co. 171  
Co. 7. 2.

If a Man committeth a Robbery, or stealeth a Horse, Beast, or other Goods in one County, and doth carry, lead, or drive the Goods into another County, it is Felony in every County, whither he doth carry or drive those Goods, and the offender may be indicted or appealed of Felony or Theft, and arraigned, and have his Judgment in any of those Counties: But the offender cannot be appealed for indicted of Robbery, but only in the County where the Robbery was done; for it is not Robbery in any other County; for Robbery must be done to the Person of a Man. *Br. Cor. 140. & Indictment 26.*

21 E. 4. 3.  
4 H. 7. 5.  
Pr. 130.  
Cro. 70.

If a Man do steal another Mans Goods, and after another stealeth the same from him, the owner of the Goods may charge the first or second Felony at his choice.

Also if a Man shall deliver Cloth to a Tailor to make a Garment, if the Cloth be stoln from the Tailor, the offender may be charged and indicted for stealing the same, either at the owners suit, or at the Tailors.

Also an Indictment may be, *Quod bona & catalla cujusdam hominis ignotifelonice cepit*. See here before. And any Man may in such case, both inform the Court, and by their direction may prefer an Indictment against the Felon, and give Evidence to the Inquest therein. Dyer 99.

*Conspiracy.* And so if the owner be known, but will not charge the Felon therewith, any other person (especially after Proclamation made in the Court, That if any will inform or give in Evidence for the King, he shall be heard) may safely come in, and may inform the Court, prefer an Indictment, and give in Evidence for the King, against the Felon, without any danger of Conspiracy, because it is for the Kings advantage to have the forfeiture of the Felons Goods: Yea, in the two former Cases, if the Justice of Peace shall hear of any person that can inform any material thing against such a Felon, or against any Felon, the Justice in his discretion may send for him, take his Information, and may bind him to give Evidence against such Felon: 'For every one shall be admitted to give Evidence for the King. *Stamf.* 163. 35 H. 4. 15  
Fitz. Co. 5.  
Fit. 1152.  
Stam. 163.  
173.

*Prosecution.* Also if any Robbery or Theft be committed, and the party robbed, or other owner of the Goods, will not charge the Felon therewith, yet it seemeth every Justice of Peace may cause such Felon (or any Person suspected for such Felony) to be apprehended; and may Examine him thereof; and also may send as well for the party robbed, &c. as for all such other persons as can inform any thing material concerning the said Felony, and may take their Informations (upon Oath :) And if upon such Examination he shall find cause, the said Justice may commit the offenders, and bind over the Informer. See *antea* in the other Title of *Felony*.

*Hue and Cry.* Note also (for the better prevention and apprehending of Felons) that upon all Homicides, Burglaries, Robberies, and other Felonies, and when Men are put in great danger, Hue and Cry shall be levied, and every Man shall follow the Hue and Cry, and whosoever doth not, and is thereof convicted, shall be attached to appear before the Justices of Gaol Delivery. Also, it seemeth, any Justice of Peace may bind them over to appear before the Justices of Gaol Delivery, and that by force of the Commission in the first *Assize*. 3 L. 2. c. 4.  
P. Fel. 32.  
Hue and Cry.

Yea, upon any Felony committed, all Men generally shall be ready (at the Commandment of the Sheriff, and at the Cry of the Countrey) to pursue and arrest Felons, upon pain to be grievously fined. 3 Ed. 1. 9.

*Escape.* And such Hue and Cry and Pursuit shall be made from Town to Town, and from Countrey to Countrey; and shall be made by Horse-men and Foot-men: And in case of Robbery, if (after notice thereof given to some dwelling near) none of the Felons be taken within forty days after the Felony committed, then the whole Hundred where the Robbery was done, shall answer for the Robbery done, and the damages: But yet the Inhabitants of any other Hundred, wherein negligence, fault, or defect of pursuit and fresh suit shall happen to be, shall answer and satisfy the one moyety, and half of all and every such sums of money and damages. See more here before, *tit. Hue and Cry, and Robbery*. 13 L. 1.  
c. 14.  
27 El. 13.  
28 El. 3.  
c. 11.  
See Br.  
Brit. 104.

And if a Man shall be slain in the day time, (sc. so long as it is full day light) in a Town not Walled, and the Murtherer escape, the whole Town where the Murther was done, shall be amerced for this Escape. But if it be in a City or Town Walled, then if the Murther, &c. were by night or by day, they shall be amerced for the Escape. *Fitz. Co.* 238, 293, 299, 302. *Stamf.* 33. l. 3 H. 7. 1. P. Coroners 13. 3 H. 7. c. 1.  
Co. 74. b.

And

And if a Man be slain in the day time, out of any Town, then the Hundred shall be charged therewith; and for the insufficiency of the Hundred, shall all the County be charged; *See Stamf. 34.* Yet see *Dyer 210.b.* that the Township shall be amerced for the Escape, although the Murther were committed in the Field of the Town, or in a Lane, &c. And the Justices of Peace are to inquire of such Escapes, and to certify the same into the *Kings Bench. P. Just. 19.*

*P. R. 156.* Also, every Man is a sufficient Bailiff and Officer to apprehend him that is pursued by Hue and Cry: And if he be taken with the thing supposed to be stolen, though he neither be of evil name, nor a stranger, yet every Man may commit as well such suspected person, as also such Goods, to the Town where they be apprehended, to answer to the King according to the Law; and the Constables of the Town are to carry before some Justice of Peace, as well such Prisoners, as also the Bringers, that the Justice may take their Information against such Prisoner, and may examine and commit such offender, or person so suspected.

But if a Man do levy Hue and Cry upon another without cause, both the one and the other shall be attached, and carried before a Justice of Peace to answer it, as disturbers of the Peace, and be bound to their Good Behavior.

*9 Ed. 4. 9. Co. 5. 92.* Note also, That the Kings Officer may break open any Mans house, *House* to apprehend any Felon, or any person that is suspected of Felony, being in the said house. See hetc of *antea, tit. Forceable Entry.*

Also the High-ways are to be enlarged, and to be cleansed of all Bushes, Woods and Trees, &c. whereby such offenders may lurk or escape: See *antea, tit. High-ways, and Robbery.*

*18 E. 1. 4. P. Watch. 1.* And for the better detecting and apprehending of such offenders in great Towns being Walled, the Gates are to be shut from the Sun-setting, until the Sun-rising; and no Man shall be lodged in the Suburbs from nine of the clock until day, unless his Host will answer for him. And in all other Towns Watch shall be kept, from the Feast of the *Ascension* until *Michaelmas*, from the Sun-setting until Sun-rising; and if any stranger do pass by them, he shall be arrested until the morning, &c. And if they will not obey the Arrest, then all Men shall be ready to follow with Hue and Cry, until such Night-walkers shall be taken: And for such Arrest none shall be punished. And the Constables ought to see these Watches duly set and kept; and as well the Constables of Hundreds and of Franchises, as also the Petty Constables of Towns, ought to make Presentment to the Justices of Peace at their Sessions, (and to all other Justices thereto assigned) of the defaults of Watches, and of such as lodge *watch* strangers, for whom they will not answer: And the Justices of Peace at their Sessions shall punish such as be found in default. *P. Watch 2.* See *antea, tit. Watch*, That every Justice of Peace may cause these Watches to be duly kept.

The Forfeiture of Felony. CHAP. CLXIII. V. 110.

*Co. 4. 124. Co. L. 41.* The punishment of every Person attainted of Felony, is fourfold. *§. 1.*

*scil.* 1. The offender shall lose his life, and be hanged between Heaven and Earth, as unworthy of both.

*Ibid.* 2. He shall lose his Blood, as well in regard of his Ancestry, as of his Posterity; for his Blood is corrupted, so as he hath neither Ancestor, Heir, nor



nor Posterity. See *Co. 11. 1. b. & Littleton, 745, &c. Co. L. 391, 392.*

3. He shall forfeit his Feeſimple Lands, (from the time of the offence, *Ibid. Star. Prer. Reg. c. 16.* &c.) wherein the King ſhall have *Annum, diem, & vaſtum*, to the intent that the offenders Wife and Children ſhall be caſt out thereof, his Houſes razed, his Trees rooted up, his Meadows ploughed up, and all his Land waſted and deſtroyed. And after the year, day and waſte, the Land ſhall go by Eſcheat to the chief Lord of the Fee: (But yet the Lord may fine with the King for all, *ſc.* For the year, day, and the waſte, and ſo have the Land preſently.) *Quere*, if the Lord may enter; it ſeemeth he cannot. See 17 E. 2. c. 16. & *Stamf. de Prer. 49. Fitz. Tra. 48. & Reſeiſ. 36.*

4. The offender ſhall forfeit and loſe all his Goods and Chattels, from the time of his Attainder only.

The King ſhall have all the Goods of Felons which be condemned, and which be fugitive, whereſoever the ſaid Goods be found; *ſcil.* All their Goods moveable and unmoveable, their Corn growing, and the profits of their Feeſimple Lands, for a year and a day, and the Iſſues and Profits of their other Lands, during their lives; and all their Debts due to them by Statute, Recogniſance, Obligation, or ſimple Contract, and Money due upon accounts. And the King, or he, to whom the King ſhall give ſuch debt, ſhall have an Action therefore in his own name; and yet the King ſhall not pay ſuch debts as the ſaid Felons did ow. *Co. 3. 3. d. F. Cor. 317. 334. 10 H. 4. 1. Dyer 30*

*Uncore le offender ne forfeitera ſes Terres pur Manslaughter; nec in caſe de Homicide per Miſadventure (in ſeſans choſe loyal,) nec pur Homicide ſur Neceſſity ou ſe defendendo. Vide Ba. 2. 3. & Co. L. 391.*

§. 2.  
*Seiſure.*

By the Common Law, after a Felon is found guilty before the Coroner, or that it be found before the Coroner, that he did ſlie for the Felony, there the Coroner, Sheriſſ, Under-Sheriſſ, or Eſcheator, &c. may (for the King) ſeiſe the Goods of the Felon, and praiſe them by an Inqueſt, &c. before his Attainder; for by ſuch thing found before the Coroner, the Goods of the Felon are forfeited without further inquiry, or Tryal of the Felon; and yet the Officer may not in ſuch caſe carry the Felons Goods away, but (after appraiſement as aforeſaid) muſt leave them in the cuſtody of the Felons Neighbors where he dwelt, or in the cuſtody of the Town where the Goods were, to be answered to the King: And if he were indicted of Felony, yet his Goods ſhould not be removed out of his houſe until he were attainted, but the Officer was to ſeiſe and praiſe them, and to take Surety of the party, that they ſhould not be imbezelled; and if the party would not find Surety, then the Officer was to deliver them to the Neighbors, and the ſaid Goods ſhould be kept by his Neighbors all the time of his imprisonment: And the Felon muſt have had reaſonable maintenance of his Goods for himſelf and his Family, until he were convicted and found guilty of the Felony; and then the remainder was the Kings. See 25 Ed. 3. c. 14. P. Ind. 5. & *Bract. fol. 123. & 136. b.* *22 Aff. 36. Br. For. 33. 43 E. 2. 4. Br. For. 7 H. 4. fol. ul. Stamf. 192.*

And now by the Statute made 1 R. 3. c. 3. it is ordained, That if any Sheriff, &c. or other perſon, do take or ſeiſe the Goods of any perſon arreſted and imprisoned for Felony, or ſuſpition thereof, before the ſame perſon be convicted or attainted of ſuch Felony, or that the ſame Goods be otherwiſe lawfully forfeited; he ſhall pay to the party grieved the double value of the Goods ſo taken or ſeiſed, &c. Which Statute ſeemeth to be but a confirmation of the Common Law, ſaith Mr. *Stamf. fol. 193.* ſave that it giveth the party grieved a more ample recompence, and more ſpeedy remedy, than the Common Law before did: So that before Attainder or Conviction, the Goods of the Felon that is in Priſon ought not *P. Sheriſſ. 24. P. Indict. Stamf. 193*

not to be seised, nor committed to the Town, nor taken out of the Felons house or possession. For a Man attainted of Felony shall forfeit such Goods as he hath at the time of the Attainder, and not at the time of the Felony committed; and a Felon or Traytor, after the Felony or Treason committed, and before Attainder or Conviction, and Judgment given upon him, may sell (*bona fide*) for his sustenance, &c. his Goods or Chattels, be they real or personal; but yet they may not disorderly sell or Waste their Goods. Therefore it seemeth, that the Officer may still take Surety that the Goods be not imbezelled; and for want of Sureties may seise them, and praise or value them, and then deliver them to the Town safely to be kept, until the offender be convicted or acquitted. See *Br. Forf.* 44. where Mr. *Brook* delivers his opinion, That this order ought to be observed of every one which committeth Felony, until he be attainted.

Br. Forf.  
38.  
Co. 8. 171.  
Stamf. 152

Nay, after Attainder, if they shall grant their Goods or Lands, it shall bind all persons, except the King and Lord by Escheat; but against them such Grant is void. And as to their Lands, relation is to be had to the day of the Felony committed, by the Attainder, by Verdict, Utlary, or otherwise. *Stamf. de Prærog.* 48. Relation.

F. Cor.  
366.

After the Conviction of a Felon, (if the Goods were in the Felons possession at the time of his Conviction) the Town presently stands charged therewith, and shall answer for the loss or impairing of them, though the Goods were never seised by the Officer, nor delivered to the Town, (except they can shew what other person hath detained those Goods, and that they could never have possession of them; which Exception is by Statute of 31 E. 3. 3. *P. Escheat* 3.) So that it shall be safe for the Town to seise such Goods (in whose hands soever they be found) presently after the Conviction of any Felon; and then shall it be safe for them to do it by Inventory, taken in the presence, and by the testimony of some other honest Men. Yet *quere*, for, by the opinion of *Prisot*, none may seise any Goods for the King, but an Officer who is accountable to the King. 49 H. 6. 1. *Br. R. seif.* 15.

Stam. 193,  
194.

Co. 11. 30  
& 58.

Conviction in Felony is, where a Man (being indicted of Felony) upon his Arraignment, submitterh himself to be tried by the Countrey; and then is found guilty by the Verdict of Twelve other Jurors; or shall confess the offence upon his Tryal, or is Outlawed for the same, (*scil.* is pronounced Outlawed of the Felony at the County Court.) Also Conviction in all other offences (by the Common Law) is, where the offender is indicted, or the offence presented by a Jury, whereto the offender pleadeth *Not guilty*, and is found guilty by the Verdict of Twelve other Jurors, or by a second Jury, &c. 6. 3.  
Convictio  
on.

P. R. 179.  
Dyer 175.

Co. 11. 30.

And yet a Popish Recusant indicted thereof (at the General Gaol-delivery, or Quarter Sessions for the Peace) and Proclamation there made, commanding the offender to render his Body to the Sheriff of the same County, &c. If at the next Gaol-delivery or Sessions, the same offender so proclaimed, shall not make appearance of Record, such default recorded shall be a sufficient Conviction in Law of the said offence. 29 El. cap. 6. & 3 Jac. 4. *P. Recusants* 13. 42. Recusants

And sometimes (in other cases) upon Proclamation made, if the party shall not appear and yield himself, he shall be thereby convicted or attainted of the Fact, &c. See 5 H. 4. cap. 6. 11 H. 6. cap. 11. 13 H. 6. cap. 7.

And (by divers Statutes) you shall find that an offender may be convicted (out of Court) either upon the View and Record of the Justice of Peace, or by the Confession of the offender, or upon Examination of Witnesses

nesses before one or two Justices of Peace, and that out of the Sessions. See here *antea*.

And sometimes Conviction may be in the Sessions, upon the Certificate or Presentment of the Justice of Peace. See *tit. Ale-houses, and Highways*.

And sometimes by Confession, or Examination of Witnesses in Court, without any Verdict taken. See *Cromp.* 130, 131. *B. Confess.* 32.

§. 4. And in some Cases, Conviction shall be taken for Attainder. See *Co.* 11. Attainder. 59/60.

The difference between Attainder and Conviction in case of Felony, is, Co. 11. d. Stamp. 31 & 185. b. Co. 139a. b. The Person attainted hath Judgment of Death given upon him: The Person Convict, before Judgment, prayeth his Clergy, and hath it, and so preventeth the Judgment, &c. Or after Verdict, Confession, or Uttery, the Felon is said to be convicted till Judgment be given.

And so a Man is properly said to be Indicted, when the offence is first found by the great Inquest, or other Jury of Inquiry.

2. Convicted, when the offender, having put himself upon his Tryal, is found guilty by a second Jury; here he is Convict, before he hath Judgment.

3. Attainted, when (after such Conviction) Judgment is given against the offender, and thereby his Lands are forfeited, and his Blood corrupted, *Co.* 1. 391.

*Examination of Felons, and Evidence against them.* CHAP. CLXIV.  
V. III.

§. I. **W**hen any Person shall be brought before a Justice of Peace for Murder, 2 & 3 Ph. Manslaughter, or any other Felony (wherewith the Justice of Peace may deal,) or for suspicion thereof; before the Justice shall commit or send such offender to Prison, he shall take & M. 13. P. Just. 107

1. The Examination of such offender.

2. The Information of such as bring him, *viz.* He shall take their Examination and Information of the Fact, and the circumstances thereof: And so much thereof as shall be material to prove the Felony, he shall put in writing within two days after the said Examination.

3. Also the same Justice of Peace shall bind all such by Recognisance, as do declare any thing material to prove the Felony, to appear at the next General Gaol-delivery, (to be holden where the Tryal of the said Felony shall be) then and there to give in Evidence against such offenders. See *antea, tit. Felony*.

4. And then the same Justice shall make his *Mittimus*, to carry the offender to the Gaol.

Or if such offender be bailable, (and that there be two Justices of Peace present together, the one of them being of the *Quorum*) after such Examination and Information taken, and put in writing, the said Justices of Peace may bail such Prisoner. & 3 Ph. & M. 13. P. Just. 107

5. And the said Justice or Justices of Peace shall certify at the next General Gaol-delivery such Examination, Information, Recognisance, and Bailment.

And if any Justice of Peace shall offend in any thing contrary to the true intent and meaning of either of these Statutes of 1 & 2, & 2 & 3 Ph. & Ma. the Justices of Gaol-delivery, in their discretions, shall fine every such Justice of Peace.

And



And yet for Petty Larcenies, and small Felonies, the offenders may be tryed at the Quarter Sessions, and the Examinations and Informations may be certified thither, and the Informers bound thither. See hereof *antea*, tit. Fel. & 3 H. 7. cap. 3. & Fitz. 251. f.

The form of the Recognisance, see *postea*, tit. Recognisance.

The form of the *Attainder*, see *postea*, tit. *Attainder*.

The form of the Bailment, see *postea*, tit. *Bailments*.

If the offender, upon his Examination before the Justice of Peace, shall confess the matter, it shall not be amiss that the offender subscribe his name or mark, under such Confession made by him.

If the offender confesseth the Felony before the Justice of Peace, and notwithstanding he letteth him go, without committing or bailing of him; this seemeth to be a voluntary Escape, and so Felony in the Justice. *Crompt.*

39. 44.

Also, if any person shall be brought before a Justice of Peace, and charged with any manner of Homicide, (other then that which shall be done in the orderly execution of Judgment) as it were done *se Defendendo*, or by casualty, (which are not Felonies of Death) or done by an Infant, a Lunatick, or the like; yet it is the Justices part, and safest for him, to commit the offender to Prison, or at least to joyn with some other in the Bailment of him, (if the Cause will suffer it) to the end the party may be discharged by a lawful Tryal. See *antea*, tit. *Homicide*.

The like is to be done where any Felony is committed, and one brought before the Justice of Peace upon suspicion thereof, though it shall appear to the Justice, that the Prisoner is not guilty thereof: For it is not fit that a Man once arrested and charged with Felony (or Suspicion thereof) should be delivered upon any Mans discretion, without farther Tryal. *Vide Crompt.*

34. *Lamb. 229.*

The Justices of Peace have authority (by the words of the Statute) to bind by Recognisance all such as do declare any thing material to prove the Felony, to give Evidence against the offender: And yet the Wife is not to be bound to give Evidence, nor to be examined against her Husband; for, by the Laws of God, and of this Land, she ought not to discover his Counsel, or his offence, in case of Theft, (or other Felony, as it seemeth.) See *Stamf. 26. b.* Nay, I have known the Judge of Assize greatly to disallow, that the Wife should be examined, or bound to give in any Evidence against others in the case of Theft, wherein her Husband was a party; and yet her Evidence was pregnant and material to have proved the Felony against others that were parties to the same Felony, and not directly against the Husband. See *antea*, tit. *Accessory*.

And Sir *Edw. Coke*, 1. 6. b. saith, That it hath been resolved by the Justices, *Termine Pasche 10 Jac.* that the Wife cannot be produced either against or for her Husband. *Quia sunt due anime in Carne una.*

And yet it was resolved by the Judges (in the case of the Lord A.) that in Criminal Causes the Wife may be a witness against her Husband, especially where she is the party grieved. But that in Civil Causes she cannot. *7 Carols Regis.*

"But in the Lord *Audley's* Case, the Lord *Audley* had procured one to Ravish his Lady, and was assisting to it himself; and it was resolved, That the Wife might in that case be a witness against her Husband: "But the reason of that case, will not hold in other Cases of Felony, "for there she was *pari leso*, and the Case was capable of no other "Proof.

But

§. 3. But for Children, I find in the Book of the Discovery of Witches at <sup>E. 3. 4. 4.</sup>  
*The Child. Lancaster Affizes, Anno Dom. 1612.* That the Son and Daughter of *Eliza-*  
*beth Devise*, a Witch, were not only examined by the Justices of Peace  
 against the said Mother, and the said Examinations certified and openly  
 read upon the Arraignment and Tryal; but the Daughter also was com-  
 manded, and did give open Evidence against her Mother then Prisoner at  
 the Bar.

<sup>By an</sup> I find farther in the said Book of the Discovery of Witches, that  
<sup>ant.</sup> two Children, the one about nine years of age, the other of four-  
 teen, did upon their Oaths give Evidence against the Prisoners upon  
 their Arraignment. See the Book, fol. 4. *La. b. K. 4. a. b.* The like  
 was done at Cambridge, at Lent Affizes, *Anno Dom. 1629.* before Sir  
*Henry Mountague*, Lord Chief Justice of the King's Bench. And here-  
 with agreeth in some sort, *Mr. Bract. fol. 118. b.* That *Minor infra etatem*  
 'may be a Witness or Accuser, *cum tamen accusatus attachietur usque ad eta-*  
 'tem accusantis.

Accusation or Information by one that is decrepit or unable to travel,  
 is good, and may be taken by the Justice of Peace upon Oath, and certified  
 at the next General Gaol-delivery, or Sessions of the Peace, as the Cause  
 shall require.

If one be an Accuser upon his own knowledge, sight, or hearing,  
 and he shall utter the same to another, that other may be an Accuser.  
*Dyer 99.*

Accusation by an Approver. See hereof *tit. Bailment.*

And note, That an offender confessing any Felony (upon In-  
 dictment or otherwise) against himself, may also accuse others of the  
 same Felony; and such Accusation may be taken by the Justice of  
 Peace, &c.

§. 4. Two inform against another in matter of Felony, and they vary in  
<sup>By Persons</sup> their tales, (*viz.* in the day and place, when and where the Felony was  
<sup>discredi-</sup> committed) such Information is not much to be credited. See the Story of  
<sup>ted.</sup> *Susanna.*

He that is examined, if part of that he speaketh be proved to be false, <sup>Crompton</sup>  
 he is not to be credited in the residue of his Information; and therefore <sup>100.</sup>  
 we shall find in 16 E. 4. that a Man who was produced as a witness in the  
*Chancery*, in his Deposition he was found to swear falsely in part, and there-  
 upon his Testimony was utterly rejected.

'*Mr. Bracton, lib. 3. fol. 118. saith,* That an Accuser, or Witness, must  
 'be *integre fame*, & *non criminofus*, *quia criminofus ab omni Accusatione re-*  
 'pelluntur: *Ut si Accusans fuerit Latro cognitus vel Utlagatus, vel aliquo*  
 'genere *Felonie convictus vel convincendus. Vide Pl. Co. L. 6.*

A Man attainted of Perjury, and the King pardons and restores him,  
 &c. *Quare*, whether such a persons Information shall be allowed against a  
 Prisoner; for the old saying is, *Once forsworn, ever forlorn.*

A Man attainted of Conspiracy or Forgery shall not be received to give  
 Evidence, or to be a Witness. See *Crompton. 127. b.*

But if one be brought before a Justice of Peace upon suspicion of  
 Felony, although the Information against the Prisoner shall be by such  
 Witnesses, yet it seemeth safest for the Justice of Peace to take their In-  
 formation for the King, and to bind them over to give Evidence, &c. and  
 to commit the party suspected; and upon the Tryal to inform the Justices  
 of Gaol-delivery, concerning the credit of those Witnesses.

Concerning these Accusers or Witnesses, I have farther seen two old Verfes, in these words:

*Conditio, sexus, etas, discretio, fama,  
Et fortuna, fides; in Testibus ista requires.*

‘And yet in case of Felony any man (though of no worth) may be allowed for a Witness or Proof.

‘By Gods Law one Witness shall not be sufficient against an Offender, for any Sin, Trespass, or Fault, *Numb. 35. 30. Dent. 19. 15.* And to the same purpose was the Stat. 25 Hen. 8. cap. 14. And yet now by our Law one Witness is sufficient, where the Trial is by a Jury: for they are all sworn to try the particular matter wherewith the Defendant is charged. So also one Witness is sufficient to convict an Offender before the Justice of Peace in divers cases, the Justice of Peace being so expressly therein enabled by Statute.

‘And yet in other cases where the matter is to be tried by Witnesses only, it is meet that there be two Witnesses.

‘But no man is to be condemned without an Accuser, *John 8. 10.*

When a Prisoner shall be brought before the Justice of Peace for Felony, or suspicion thereof, but they that bring him, or first complained of him, will not or cannot inform any material thing against the Prisoner; “Yet it seemeth the Justice of Peace ought to commit the party suspected after his Examination taken, and to bind over such as did first accuse the Prisoner, or such as do bring him before the Justice to give in evidence, &c. “And if afterwards the said Justice shall hear of any other persons that can inform any material thing against the Prisoner to prove the Felony, whereof he is suspected; the said Justice may grant out his Warrant for such persons to come before him, and may also take their Information, &c. and may bind them to give in evidence against the Prisoner, for every one shall be admitted to give evidence for the King. *Stamf. 163. See antea, tit. Felony, and tit. Accessaries.*

And it seemeth fit, that the parties grieved be bound, not only to give in Evidence, but also to prefer a Bill of Indictment against the Prisoner; and the other persons which can inform any material thing to prove the Felony, may be bound to give in Evidence only.

And for that men should be the readier and more willing to give Evidence against Felons, the Statute made 21 H. 8. cap. 11. hath Enacted, §. 5. Restitution  
That if any man hath any Goods stollen from him, if the Felon be thereof indicted, and after in any sort attainted or arraigned, and thereof found guilty, by reason of Evidence given by the party Robbed, or Owner of the same Goods, or by any other by his procurement, (though the Thief be not hanged, nor have Judgment of Death) then the party Robbed (or Owner of the Goods) shall be restored to his said Goods by a Writ of Restitution, though he never made any fresh Suit or Hue and Cry. Before which Statute the party Robbed could have no Restitution, without suing of an Appeal against a Felon, and fresh Suit made.

‘Also if the Felon shall be Outlawed upon the Indictment by means of the party Robbed, or Owner of the Goods stollen, he shall have Restitution of his Goods by a Writ of Restitution, *ut supra, Ba. U. 76.*

And note, That the Justices before whom any such Felon shall be found guilty (or otherwise attainted by reason of Evidence given by the party so Robbed, or Owner, or by any other by their procurement) have power



to award a Writ of Restitution for the Money or Goods stollen, directed to the party in whose hands the same Goods are, &c. 21 H. 8. cap. 11. Br. Restit. 22.

Also the Executors of the party Robbed shall have Restitution by force of this Statute, viz. Upon Evidence given by them, or by their procurement against the Felon, whereby the Felon is attainted or found guilty. Co. 6. 80.  
Ben. 3 El.

If a Thief do Rob or Steal Goods from three men severally, and he be Indicted of the Robbing or Stealing from one of them, and arraigned thereupon; in this case, though the other two would give Evidence against the Offender, yet shall not they have Restitution of their Goods, by the meaning of that Statute: for the Felon is not attainted of any other Felony, saving of that whereof he was Indicted. But if he be Indicted of all the three Robberies or Felonies severally, and arraigned upon one of them, and found guilty by the Evidence given by one of the parties Robbed, &c. yet shall he be after arraigned upon the other two Indictments, to the intent he also may be found guilty by the Evidence of the other two persons Robbed, and that so they may have Restitution of their Goods stollen, according to the meaning of the said Statute. Stamf. 166  
P. R. 162.

And if a man do steal Goods at divers times from several men, and he is after attainted at the Suit of one of them only, for the Goods stollen from him, but is not attainted at the Suit of the other; by this Attainder the Felon shall forfeit to the King not only his own Goods, but also the Goods stollen from those others at whose Suit he was not attainted, though the Felon had no property, but only a possession of those Goods; and the property of the Goods which remaineth in the right Owner in this case is forfeited (by the Owner) to the King, for default of the Owner pursuing the Felon. 44 Ed. 3.

Also if there be divers of the Thieves, and but one of the Principals attainted, (as before) yet it seemeth the party Robbed shall have Restitution.

Market.

But in these and the like cases of Restitution, if the Felon hath sold the Goods in a Fair or Market-overt, and after be attainted of the Felony, (upon Evidence given by the party Robbed) here the Owner shall not have Restitution: For by Alienation in a Fair or Market-overt, the property of the Goods stollen is altered, 12 H. 8. 10. b. Yet if he that bought the Goods in Market were privy to the Felony, such Sale shall not alter the property, *quia particeps criminis*. See 33 H. 6. 7. Co. 3. 78. Vide antea, tit. Horses.

"If any Goods of what nature soever they be, be Stollen, Purloyned, &c. and be Sold, Exchanged or Pawned to any Broker, &c. in London, Westminster, Southwark, or within two miles of London, the same shall alter no property. 1 Jac. 21.

A man shall have Restitution of Money stollen, &c. though it cannot be known. Br. Restit. 22.

§. 6.  
waifs.

But if a man hath a Horse or other Goods stollen from him, and knoweth not by whom; if the Felon waiveth the Goods, flyeth, and escapeth, and the Kings Officer, or the Lord of the Mannor, &c. seisseth them, the party Robbed shall have no Restitution, for that he cannot indict and attain the Felon. And yet if the Felon had not the Goods in his possession, and with him at the time when he fled, (but had formerly left them elsewhere, sc. in the Thieves own house, or in any other mans house, or in the custody of any other, or had hid them) then are they no waived Goods, nor forfeit,

feit, but the Owner may take them again wheresoever he findeth them, without any Restitution awarded. *Co. 5. 109.*

Also in the foresaid Book of Discovery of Witches, I observe one other thing, *viz.*

That Examinations taken by Justices of Peace in one County, may be (by them) certified in another County, and there read and given in Evidence against the Prisoner, *T. 2. 3.* And in such cases the Examinations would be taken upon Oath.

Crompt.  
193.

The Offender himself shall not be examined upon Oath: for by the Common Law, *Nullus tenetur seipsum prodere.* Neither was a mans fault to be wrung out of himself, (no not by Examination only) but to be proved by others, until the Stat. 2 & 3 P. & M. cap. 10. gave Authority to the Justices of Peace to examine the Felon himself.

Examina-  
tion (viz.)  
s. d.

But it seemeth convenient, in cases of Felony especially, that the Information (of the Bringers and others) which the Justices of Peace do take against the Prisoner be upon Oath: otherwise upon the Trial of the Prisoner, such Information or Examination taken by the Justice of Peace shall not be read or delivered to the Jury, nor given in Evidence against the Prisoner upon his Tryal. And so was the Direction of Sir *Ed. Coke*, late Lord Chief Justice, (5 *Jacobi*, at *Cambridge* Summer Assizes) upon the Tryal of a Felon: but (saith he) in case of a Trespas to the value of two pence, no Evidence shall be given to the Jury but upon Oath, much less where the life of a man is in question. See *Lamb. pag. 210.* that he hath heard the Opinions of other Justices of Assize delivered accordingly.

s. 7.  
upon Oath

Crompt.  
194.

Also if the Informers be examined upon Oath, then though it happen they should dye before the Prisoner have his Tryal, or if they shall not appear upon the Recognizance, and give Evidence against the Prisoner, (being laboured, perhaps, to absent themselves) yet may their Information be given in Evidence, as a matter of good credit.

Also it is found by experience, that without Oath many Informers will speak coldly against a Felon before the face of the Justice of Peace; yea, and will also speak very sparingly and coldly upon their Evidence given before the Judges of Assize; as I have observed in some, had they not been urged with their former Information taken upon Oath. For the laboring (by the Offender and his Friends) to such as are to Inform and give Evidence (both before the matter cometh before the Justice of Peace and after) is now grown over-common and usual.

Lamb. 109

Also *M. Brook* (*tit. Examination 32.*) is of opinion, That every Examination ought to be upon Oath: And so also is the practice of the Justices in the higher Courts at *Westminster*, in all the Examinations of Summoners, Viewers, Sheriffs, Clerks, or other Officers, &c.

And here let me admonish all such as are to inform or bear Witness against a Prisoner, or any Offender, before a Justice of Peace, or other Magistrate, that they be well advised what they testify upon their Oaths; knowing that in such cases, if either they should not speak the truth, or should conceal any part of the truth, they should offend against God, the Magistrate, the Innocent, the Commonwealth, and their own Souls. *sc.*

s. 8.  
Oaths.

Against

God, in despising of him, taking his Name in vain, and belying the truth.

Magistrate, in misleading and deceiving him, and causing him to do Injustice.

Innocent, in spoiling him of his Name, Goods, or Life.

Commonwealth, *sc.* if the party be nocent or guilty, and he clears him by false Witness.

His own Soul; for it is Perjury in him, at least in the presence of God and good men.

And though he be not presently sensible of the sore, yet, as one well saith, it will fester, and he shall then feel it most when no Plaister shall be found to cure it: yea, a Hell will come to them, before they come to Hell; for a Conscience is,

1. *Testis*, a Witness accusing them.

2. *Judex*, a Judge judging and condemning them.

3. *Carcer*, a Prison.

4. *Tortor*, an Executioner; yea, no Tongue can express the Torture of a troubled Conscience.

*Whether Information, Evidence or Proof of Witnesses shall be taken against the King.* CHAP. CLXV. V. 112.

IT seemeth just and right, the Justices of Peace, who take Information against a Felon or person suspect of Felony, should take and certify as well such Information, Proof and Evidence, as goeth to the Acquittal or Clearing of the Prisoner, as such as makes for the King, and against the Prisoner: for such Information, Evidence, or Proof taken, and the certifying thereof by the Justice of Peace, is only to inform the King and his Justices of Gaol-delivery, &c. of the truth of the matter.

And Sir *Edw. Coke* (at Lent Assizes at *Bury*, 5 *Jac.*) advised a Coroner, that he ought to have done accordingly, (as I have heard.)

But *quære*, if the Justices of Peace, or Coroner, may take upon Oath such Information, Evidence, or Proof, as maketh against the King. It seemeth no.

Upon Trial of Felons before the Justices of Gaol-delivery, the said Justices will often hear Witnesses and Evidence which goeth to the clearing and acquittal of the Prisoner, yet they will not take upon Oath, but do leave such Testimony and Evidence to the Jury to give credit or to think thereof, as they shall see and find cause.

*Popham*, Chief Justice (at *Cambridge Assizes tempore Eliz.*) committed one to Prison, who, upon the Trial of a Felon, called out, That he could give Evidence for the Queen; and when he was sworn, he gave Evidence to acquit the Offender.

But by the Statute of 31 *Eliz. cap. 4.* it was Enacted, That such persons as shall be impeached for any Offence made Felony by that Statute (being against imbezilling of Armour, &c.) shall be admitted to make any lawful proof that they can, by Witness or otherwise, for their discharge and defence.

In 7 *H. 4.* We shall find, that one of the Serjeants, as *amicus Curie*, and to inform the Court, (that they should not err) did shew his Opinion to the benefit of a Prisoner, upon the insufficiency of the Indictment. The like is to be seen in *Brooks Case*, 28 *Eliz. in Banco Regis*, Co. 4. 39.



## Causes of Suspicion: CHAP. CLXVI. V. 113.

**N**ow upon the Examination of Felons, and other like Offenders, these Circumstances following are to be considered.

1. His Name; *sc.* if he be called by divers names. *Duplex nomen malum omen.*

His Parents; if they were wicked, and given to the same kind of fault.

His Education; whether brought up idly, or in any honest Occupation.

His Ability of Body; *sc.* if strong and swift, or weak or sickly, not likely to do the act.

His Nature; if civil or hasty, witty and subtil, a Quarreller, Pilferer, or Bloody-minded, &c.

His Means; if he hath whereon to live, or not, 'or *si solito ditius se habuerit in vestibus & in aliis ornamentis, cibis, & potibus, & huiusmodi.* Br. fol. 120. 122.

2 Quality, His Trade; for if a man liveth idly or vagrant, (*nullam exercens artem nec laborem*) it is a good cause to arrest him upon suspicion, if there have been any Felony committed, 7 E. 4. 20. Br. *Faux. imp.* 22.

His Company; if Ruffians, suspected persons, or his being in company with any the Offenders, 7 E. 4. 20.

His Course of life; *sc.* if a common Ale-house-haunter, or riotous in Diet, Play, or Apparel.

Whether he be of evil Fame or Report.

Whether he hath committed the like Offence before, or if he hath had a Pardon, or been acquitted for Felony before: *Nam qui semel est malus, semper presumitur esse malus in eodem genere mali.*

So if he hath formerly abjured the Realm, or been Out-lawed for Felony, although he hath his Pardon.

If he hath any Blood about him or his Apparel, or that his Weapon be bloody.

If any of the Goods stolen be in his possession.

If any of the Apparel of the party Murdered be in his possession.

3 Marks  
or Signs.

The change of his Countenance, his Blushing, Looking downwards, Silence, Trembling.

His Answers doubtful or repugnant.

If he offered Agreement or Composition.

If he hath laboured his Neighbours not to speak thereof.

The measure of his foot, or his horses foot.

The bleeding of the dead body in his presence.

If, being charged with the Felony, or called Thief, he saith nothing. F. Cor. 24.

If he fled: *Fatetur facinus, qui iudicium fugit. Co. 11. 60.*

If he hides himself, or takes Sanctuary.

If he lies lurking in a place where he hath nothing to do.

If he were the first that found the party Murthered.

Place; *sc.* if convenient for such act, as in a House, in a Wood, Dale, &c.

Time; the year, day, hour, early or late.

4 The Fact

Where the Offender was at the time of the Fact, and where the day or night before; his business and company there: and Witness to prove all these.

Manner; if willingly, by chance, or necessity.

5 The Cause.

If former malice.

If to his benefit, or what hope of gain.

If for the eschewing of any hurt or danger.

6 The Person.

*Agens*: if Principal or Accessary, Infant, Lunatick, &c.

*Patiens*: if against the King, Commonwealth, Magistrate, Master, &c.

Note That a man accusing another but upon suspicion is not to be re-proved, though the party accused be proved to be innocent. *Numb. 5. 28, 31.*

A Felon brought before a Justice of Peace accuseth others; it is sufficient cause for the Justice to grant out his Warrant for the rest. See *Postea*.

A man going to Execution accuseth another of Felony; it is sufficient cause to arrest him. *E. Cor. 111*

§. 2. *Communis vox & fama*, that he did the Offence, is sufficient cause of suspicion, *sc.* where such a Felony is done: otherwise not. *Dr. Fox. Impriat.*

But yet for the better conceiving what may breed or give just cause of suspicion, mark some of *M. Bractons Rules*.

*fama*: *Oritur suspicio ex fama: Fama vero quæ suspicionem inducet, oriri debet apud bonas & graves, (non quidem malevolas & maledicas, sed providas & fide dignas) personas idque non semel, sed sapius: Vane autem voces populi non sunt audiende.* *Stamf. 97.*

And therefore where the common Proverb is, *Vox populi est vox Dei*, it should be, *Vox populi Dei est vox Dei*.

*Si Furtum in manu alicujus inveniatur, vel sub potestate alicujus, tunc ille in cuius domo vel potestate res furtiva inventa fuerit, tenebitur, (nisi Warrantum invenerit quod eum inde defendere possit:)* for, as another saith, *Cum adsunt testimonia rerum, quid opus est verbis?* *Stamf. 29.*

*Si quis noctu cubaverit in domo solus cum aliquo qui interfectus sit, vel si duo aut plures ibi fuere, & Hutesium non levavere, nec plagam a latronibus vel interfecto-ribus in defensione facienda acceperere, nec ostendunt quis de se vel de aliis hominem interfecerit; his casibus mortem dedicere non possunt.* *Stamf. 179*

*Si quis in domum suam notum vel ignotum acceperit, qui vivus ingredi visus est, vero postea nunquam nisi mortuus, dominus domus, si tunc domi sit, vel alii de* *Ibid.*

de familia qui tunc interfuerunt, pœnam capitalem subibunt, nisi forte per patriam fuerint liberati.

Stamf. 97.  
8 179.  
Co. l. 6.

Sunt etiam quedam præsumptiones ita violentæ, ut probationem non admittunt in contrarium; ut si quis cum cultello cruentato captus sit super mortuum, vel fugiendo a mortuo, vel mortem constetur: quibus casibus non admittitur mortem dedicere, nec alia opus est probatione.

Sir Ed. Coke, l. 6. maketh three sorts of Presumptions: viz.

§. 3.  
Presumpti-  
on.

1. *Violenta*, (as in this last former case) which he saith is *plena probatio*.

2. *Probabilis*, which (saith he) moveth little.

3. *Præsumptio levis, seu temeraria*, which moveth not at all.

And yet in cases of Felony, &c. the Confession of the Offender, upon his Examination before the Justice of Peace, shall be no Conviction of the Offender, except he shall after\* confess the same again upon his Tryal or Arraignment, or be found guilty by Verdict of twelve men, &c.

\* Co. 11.  
302. vide.

To the like purpose also is the Rule of the Civil Law, *si quis in iudicio sponte de seipso constiteatur, & postea maneat in Confessione, satis est*: If any man in Judgment do confess of himself, of his own accord, and doth persevere in his Confession, it is enough, and such Confession shall be taken for an Evidence of the crime.

Confession.

But yet at Lent Affizes at Cambridge, Anno quarto Caroli Regis, before Sir Francis Harvey, upon the Arraignment of a Prisoner for Felony, his Examination, which was taken before the Justice of Peace, wherein he had confessed the Felony, was only given in Evidence, no other Evidence then coming in upon his Tryal; and the Prisoner upon that his own Confession before the Justice of Peace was found guilty by the Jury of life and death, and had Judgment, &c.

Also in cases of secret Murthers, and in cases of Poysoning, Witchcraft, and the like secret Offences, where open and evident Proofs are seldom to be had, there (it seemeth) half proofs or probable Presumptions are to be allowed, and are good causes of suspicion, and are sufficient for the Justice of Peace to commit the party so suspected.

8 E. 4. 4.  
5 H. 7. 4.  
Br. ex. imp.  
4 10.

But note, (by the Common Law) That in an Action of False Imprisonment brought against the Constable (or other person that shall arrest another upon suspicion of Felony) it is no Plea for them to say, that the Plaintiff was suspected of Felony: but they must alledge, That there was such a Felony committed, and that the Plaintiff was suspected for the same: for suspicion only, without a Felony committed, is no cause to arrest another. Yet see the Statute of 5 E. 3. cap. 14. 'that if any man have any evil suspicion of any persons for Felony, &c. be it by day or night, they shall be incontinently arrested by the Constables of the Towns, &c. and kept in Prison till they be delivered by the Justices, &c. Hic cap. 129.

17 E. 4. 5.  
32 H. 7. 29

Also the Defendant must alledge some special matter (in Fact) to prove that he, who was arrested, was suspected of Felony, (as to say, that the party arrested is a man of an evil fame, or a vagrant person, &c.) otherwise one man



man may arrest any other, yea every man in the Town may be arrested, when any Felony is committed.

*Mes quel est sufficient cause de suspicion, & quel nemy, serra trie per les Justices. Fi. 127.* 7 E. 4. 23.  
Br. Exec.  
8. 14. 15.  
23.

Also the Defendant must plead, That he himself had a suspicion of the Plaintiff: for if the Constable (or other person that shall arrest one that is suspected) doth not suspect him himself, it seemeth he may not arrest him upon his own Authority: and yet by the Opinions of *Keble, Vavasor, and Townsend*, as well the Constable, as others in his aid, may arrest one that is suspected of Felony, upon the suspicion and complaint (made to the Constable) of the party Robbed, 2 H. 7. 15, 16. *Br. Faux-Impris. 14.* yet *alii e contra, ibid. sc.* that the suspicion can extend to none other, but only to him that hath the suspicion, and *Br. 14 H. 8. 16. a.* accordeth: *tamen quere.* For if Felons may not be arrested or stayed but only by those that shall suspect them, and that others may not aid and assist the party that shall suspect another to have Robbed him, many Felons shall escape, and Felons shall often go unpunished. See *Plo. 46. a. & Finch 127.*

But now by the Stat. 7 Jac. 5. the Constable, &c. in the former cases may plead the General Issue (Not guilty,) and give the said special matters in Evidence.

Also if the Constable, or other person, shall arrest another upon suspicion of Felony, by virtue of a Warrant from a Justice of Peace, such Warrant shall excuse him, it being given in Evidence, &c. *Vid. postea, tit. Warrants.*

## Bailment and Mainprise. CHAP. CLXVI. V. 114.

**B**ailment, Mainprise, or Replevin, is the saving or delivery of a man out of prison, or the freeing or setting at liberty of one arrested before that he hath satisfied the Law; *sc.* by finding Sureties to appear at a certain day, and to answer, and be justified by the Law. § 1. Definition.

And to this purpose these three terms (Bailment, Mainprise, and Replevin) be indifferently used in our Statutes and Books.

He that is bailed is taken or kept out of prison, and delivered (as it were) into the hands of his Sureties, who are reputed his Guardians, and who may keep him with them, and may imprison him by some Opinions: § 2. Nature of it.  
See 22 H. 6. Br. Surety 8. & Mainp. 89.

If the Mainpernors or Sureties do at any time, or in any case, doubt that their Prisoner, or the party by them bailed, will flee, they may take him, and bring him before any Justice of Peace; and upon their Prayer the said Justice of Peace may and ought to discharge such Sureties, and to commit the party to prison, except he shall find Sureties, &c. Crompt. 157.

So if a Prisoner be bailed by insufficient persons, the Justice of Peace *ex officio* may cause him to find better Sureties, and may commit him (as it seemeth) till he shall so do; for the Stat. of Westm. 1. cap. 15. requireth, That such as be bailed be let out by sufficient Surety. P. Mainp. 2. Vide *antea tit. Surety for the Peace.*

If the Prisoner cannot find sufficient Sureties, the Justice of Peace is not bound (nay ought not, knowing their insufficiency) to let the Prisoner to Bail. See Co. 10. 101.

And therefore, although the number of such Sureties, their sufficiency, and the summe wherein they shall be found, resteth (in some sort) in the discretion of the Justices; yet it is safe for them to take two Sureties at the least, and those to be Subsidy-men, and to be bound in good summes, especially if the Prisoner be in for Felony, or suspicion thereof: for the more and the more able that the Sureties are, the rather they will cause him that is bailed to appear. And again, for want of taking sufficient Bail the Justices of Peace are finable. And at Cambridge Assizes, A.D. 1613. Judge Warburton threatned to have set 40 l. Fine upon two Justices of Peace, who had bailed a Prisoner that was committed for suspicion of Felony, and appeared not, for that the Sureties were not Subsidy-men. § 3. Sufficiency.

*Quære* if the Justices of Peace may not examine upon their Oaths the Sureties concerning their sufficiency, or whether they be Subsidy-men. § 4. Oath.

The Justices of the Common Pleas (7 H. 6. 25.) did examine the ability of the Sureties upon their Oaths, &c. And that which the Higher Courts do may be a good rule for others. Vide 2 H. 7. f. 1.

Now Bailment by the Justices of Peace (in case of Felony, or for any other matter) is always upon a certain summe of Money, (as upon 40 l. &c.) the which summe the Sureties, &c. shall forfeit to the King, if the Prisoner appeareth not at his day. Stamf. 77. 21 H. 7. 20.

Also the Bailment in Felony is, *Ad standum rectum de latrocinio predicto secundum Legem, &c.* Which seemeth to imply, That they which have taken him to Bail shall not onely cause him to appear, but also to answer the Felony, Stamf. 77. d.

And in this business of Bailment (being a matter of much weight) it behoveth the Justices of Peace to be very circumspect, as well for fear of wrong by denying it to him that is bailable, as also for fear of danger § 5. Danger.

to the service it self, by yielding it where it is not grantable; and for fear of danger to themselves in both cases.

For whosoever do detain Prisoners who areailable, after they have offered sufficient Sureties, shall be grievously amerced to the King: and he that doth take any reward for the deliverance of such shall be amerced to the King, and pay double to the Prisoner.

So on the other side, if one who by the Law is notailable shall be let to Mainprise, this shall be adjudged a Negligent Escape to him or them that do let him at Mainprise; and for such an Escape or Offence they shall be fined and punished as followeth.

If the Sheriffs, Constable, or any Bailiff of Fee who hath the keeping of Prisoners, shall bail any person which is notailable, and be thereof attainted, they shall lose their Fee and Office for ever. And if the Undersheriff, Constable, or Bailiff, or such as have Fee for keeping of Prisoners, do it contrary to their Masters will, or any other Bailiff being not of Fee, they shall have three years Imprisonment, and make Fine at the Kings pleasure. *Doct. & Stud.* 135.

Note, That the Sheriffs and other Officers which do let to Bail any persons forbidden (by the Statute of *Westm.* 1. made 3 *E. 1. cap. 15.*) to be bailed, shall be punished by the Justices of Gaol-delivery, according to the form of the same Statute; or else by the said Justices they may be put to their Fine, as for an Escape punishable at the Common Law. 25 *E.* 3.39.

*Quare* if it be not Felony for them to bail Felons, or persons suspected for Felony, for that these Officers have no Authority at this day to bail such Prisoners. *Et vide hic cap.* 117.

*Bre. de Manucaptione est, lou home est prise sur suspicion de Felony, (ou est endite de Felony) pur que chose il est mainpernable per Ley, & il offer suffic. Sureties al un q'ad authority de luy lesser al mainprise, & il refuse de ceo faire.* *Fitz.* 249.

Note, what persons be forbidden to be bailed by the said Statute of *Westm.* 1. see *postea sub hoc tit.*

Note also, that the Sheriff or Constable might at the Common Law have bailed a suspect of Felony, (because they were Conservators of the Peace;) but now that power seemeth to be transferred to the Justices of Peace only. See the Stat. 1 *R.* 3. c. 3. & 3 *H.* 7. 3.

By the  
Justices.

If any Justices of Peace do let to Bail or mainprise any person who (for any Offence by him committed) is declared not to beailable, or forbidden to be bailed by the aforesaid Statute of 3. *Ed.* 1. the said Justices of Peace so offending shall pay such Fines as shall be assessed by the Justices of Gaol-delivery where the Offence shall be committed. *Fitz.* 251. i. See *hic postea.*

But the Justices of Peace and Coroners within *London* and *Middlesex*, and in all other Cities, Boroughs and Towns Corporate, have authority to let to Bail Felons and Prisoners, as they have formerly accustomed. *P.* 100b. *Fust.* 107.

If the Sheriff, Justices of Peace, or other Officer, shall bail one that is notailable, such Bailment being against Law, *quare* if the Recognizance or Bond taken upon such Bailment (for the appearance of the Prisoner) be not void. See the Opinion of *Moile*, 37 *H.* 6. 1. and of the Court there, that such a Bond taken by the Sheriff is void.

Now to shew farther the authority of the Justices of Peace in this behalf.



1 & 2 P. &  
M. cap. 13.  
P. Just. 107

No person arrested for Man-slaughter, or Felony, or suspicion thereof, § 6.  
(being bailable by the Law) shall be let to bail or Main-prise by any Justice of Peace but in open Sessions, or by two Justices of Peace at the least, *The man-ner.*  
whereof one to be of the *Quorum*, and the same Justices to be present together at the time of the said Bailment.

*Ibid.* And this Bailment the said Justices shall certifye in writing (subscribed with their hands) at the next general Gaol-delivery, &c. *Vide ante, tit. Examination of Felons.*

*Ibid.* Also before the Bailment of such Prisoner, the same Justices, or one of them, shall take the Examination of the Prisoner, and Information of them that bring him, or of the Fact and Circumstances thereof; and so much thereof as shall be material to prove the Felony shall be put in writing, before they make the Bailment: which Examination, Information and Bailment, they shall certifye at the next general Gaol-delivery, *ut supra.*

But if any Justice of Peace hath taken the Examination of the Felon, and Information against him, and after hath sent him to the Gaol; now upon Bailment of him by other Justices, they need not take any new Examination of the Prisoner or Information against him, but under their Recognizance (or together therewith) to certifye by what Justice of Peace the Felon was committed, to the end that at his hands those Examinations and Informations may be required, if he have not certified them.

Crompt.  
156.

By the Opinion of M. Crompt. a Prisoner (taken for Felony,) before his Commitment, ought to be examined and bailed by two Justices of Peace being together, (as before:) but after that the Prisoner is examined and once committed, then he may be bailed by any one Justice of Peace. *Quere* thereof.

The Justices of Peace which shall send any Prisoner to the Gaol, ought to shew in their *Mittimus* the cause of the Commitment, to the end it may appear whether such Prisoner be bailable or no. § 7. *Mittimus, the form.*

Crompt.  
1534

And if the Justices of Peace shall commit one to the Gaol, with these words in the *Mittimus*, *sc.* without Bail or Mainprise, (shewing a certain cause in their *Mittimus*;) yet if such Prisoner be bailable by Law, other Justices of Peace may bail him; (yet *quere*, seeing their Authority is equal:) but if the Prisoner were committed without Bail or Mainprise, and without shewing cause in the *Mittimus*, then other Justices of Peace cannot (or at least shall not do well to) bail him, without making the other Justices who committed him privy thereto; for he might be committed for such cause as that he is not bailable, (as for Treason, &c.)

See pag.  
69.

I have seen a Report of a Case, *Term. Trin. 37 El.* That upon an Assembly of all the Judges and Barons at Serjeants Inn, It was resolved and agreed by them to be put in ure in their Circuits, That if a Justice of Peace should commit a man to the Gaol for Felony, for which by the Law he is not bailable, but by his *Mittimus* he commits him generally, not shewing any cause, if any other Justices of Peace shall bail him, not knowing of the matter, &c. they shall be fined for the same; for they at their perils ought to inform themselves of the truth of the matter before they bail him.

14 H. 7. 10

Note where a man is bailable, yet when he cometh before the Justices he must offer Surety to the Justices, otherwise they may commit him to prison. *Br. Peace 7.*

Next, it followeth that I shew what persons beailable, and what not.

§ 8.  
Persons not  
bailable.

It appears by the Statute of *Westm. 1. cap. 15.* that in these four cases following a man was not bailable at the Common Law. *Br. Mainp. 47. F. N. B. 66. e.*

1. No person taken for the death of a man, *sc.* for Murther, or any other Homicide, was bailable by the Common Law.

And yet the Justices of the Kings Bench do use to bail them; yea, although it be for Murther, *Br. Mainp. 60, 63, 78, 47.* See the Statute 3 *H. 7. c. 1.*

Also the Stat. 1 & 2 *P. & M. cap. 13.* seemeth to admit that for Man-slaughter, and all other Homicides (except Murther onely) the Slayer may be bailed by the Justices of the Peace; which also I take to be the common practice at this day. But let the Justices of Peace be sparing and well advised herein, *viz.* that the Offence be but Man-slaughter, and not Murther.

Also it seemeth the Justices of Peace cannot bail him that hath committed Man-slaughter, if either he hath confessed the Offence upon the Examination, (*vide postea, tit. Bailment:*)

Or that he be taken with the manner:

Or that it be apparently known that he killed the other. *Vide pag. sequent.*

He that hath dangerously hurt another may go under Bail, &c. See before, & Stat. 3 *H. 7. cap. 1.*

2. Secondly, no person taken by the Kings Commandment was bailable by the Common Law: but this must be intended of the Kings Commandment by his own mouth, ('when upon his meer motion he commandeth a man to Prison) or by his Privy Council, which are incorporate to him. See *Stamf. 72, e. Br. Mainp. 37. 47.*

3. Thirdly no person taken by the Commandment of the Kings Justices was bailable by the Common Law: but this must be intended of their absolute Commandment; as if the Justice commands one to Prison without shewing cause why he doth so command, or for Misdemeanor done in his presence, or for some other cause which lieth in the discretion of the Justice, (more then in his ordinary power, &c.) and that such Imprisonment be for a punishment.

And therefore if the Lord Chancellor of *England*, or Lord Keeper of the great Seal, (who have power to commit one to Prison wheresoever they are in *England*) shall command or commit one to Prison (by such their absolute Authority,) such person shall not be bailed.

And so if the Justices of the Kings Bench shall command one to Prison.

And so if the Justices of the Court of Common Pleas sitting in their Court

Or Justices of Assize in their places; if these shall commit any to Prison, they are not bailable.

But where any Justice or Justices shall commit one, rather to be safely kept, then for a punishment, such Commitment may be said to be by an ordinary Commandment; and the party so committed is bailable. *Terms de Ley.*

4. Fourthly, Trespassers in the Forest were not bailable by the Common Law: but that was remedied by the Stat. 1 *E. 3. c. 8. & 7 R. 2. cap. 4. F. N. B. 67. c.*

By Statute.

But now, for that by the Statute 1 & 2 *Ph. & M. c. 13.* it is provided, *P. Just. 107* that

that no Justice or Justices of Peace shall let to bail any person contrary to the aforesaid Statute of *Westm.* 1. (made 3 *E.* 1.) cap. 15. and so the Statute of *Westm.* 1. is now as a line, whereby the Justices of Peace are to guide themselves in cases of Bailment; I will shew here what persons areailable by that Statute of *Westm.* 1. and what not

By this Statute of *West.* 1. no Prisoner shall be let to Bail which is taken in any of these 13 cases following.

1. Such as have abjured the Realm shall not be bailed.

2. Nor any Approver or Appellor, for that he confesseth the Felony, and himself guilty, before he can burthen or accuse another, as Coadjutor or helper with him in doing the same.

3. Nor he which is appealed by an Approver, so long as the Approver doth live, except he be of good name, or that the Approver doth waive his Appeal; see *Stamf.* 74. or that the Approver be vanquished. 25 *E.* 3. 42.

4. Nor he which is taken for burning a house, &c. feloniously. *Vide antea, Felony by the Common Law.*

5. Nor any Excommunicate person, taken (at the Bishops request, &c. upon his Certificate into the Chancery) by the Writ of *Excom. capiend.* *F. N. B.* 66 c.

And yet when the party is so taken, if he will conform himself to the Laws of Holy Church, and give Surety for his Obedience, he shall have a Writ *de Cautione admittenda*, directed to the Bishop; and if the Bishop will not, then he shall have a Writ to the Sheriff to deliver him. See *Fitz.* 63. c. d.

6. Nor any Felon taken with the manner

7. Nor a Thief openly defamed and known.

8. Nor he which is Outlawed in case of Felony; and yet in some cases such as be Outlawed may be bailed by the Court, &c. See *Stamf.* 74.

9. Nor he who hath broken the Kings Prison. *Vide antea, Felony by Statute.*

10. Nor he which is taken for Treason touching the King himself.

11. Nor he which is taken for falsifying the Kings Money.

12. Nor he which counterfeiteth the Kings Seal. *Br. Mainpr.* 59.

In all these former cases, if the cause for which the party is imprisoned be Treason or Felony, or otherwise toucheth Life or Member, then shall he not beailable; otherwise it seemeth he may be bailed.

13. Nor he which is taken for a manifest Offence; as if a man be indicted and imprisoned for a Riot, or other great Offence, before Justices, by force of the Kings Commission of Oyer and Terminer, this (and the like) are the manifest Offences whereof the Statute speaketh. See *Fitz.* 250. f.

But by the same Statute of *West.* 1. such persons areailable, which be taken in any of these six cases following.

First, he that is taken (or indicted) for light suspicion of Felony, isailable. See *Lamb.* 335. *F. N. B.* 249. g. 250. c. 251. f.

He that is taken upon suspicion of Burglary, Robbery or Theft, if he be not of evil fame, nor that there be any strong presumption against him, it seemeth he isailable.

A man had stolen certain Hogs, and (for that he was of evil fame) he was committed without Bail; yet if he could have brought proof or witness that he bought them, he should have been bailed.

A man is arrested for suspicion of Felony, and brought before the Justice; if it shall appear that there is no such Felony committed, the party may be set at liberty without Bail: but if there be a Felony committed,

3 E. 1. 15.  
P. Mainp. 1  
F. N. B. 66.

Stamf. 144  
b.  
Lamb. 337

Fitz. 250.  
d.  
Br. Mainp. 9

West. 1. 15  
P. Mainp. 2

Stamf. 74. c

16 E. 4. 7.  
Br. Mainp.  
25.

Crom. 154

§ 9.  
Persons  
ailable.  
1. Persons  
suspected.



though the Prisoner can clear himself, yet the Justices must either commit him or bail him. *Vide antea, tit. Felony by Statute.*

2. Petty  
Larceny.

Secondly, he that is taken (or indicted) for petty Larceny, (that amounteth not to 12. d. (or above the value of 12 d.) if he were not guilty of some Larceny before, he is bailable. *P. Mainp. 2. Fitz. 250. 6.*

3. Persons  
indicted by  
Inquest of  
Office.

Thirdly, such as be indicted of Larceny by Inquest of Office before the Sheriff, or before Coroners, or Bailiffs, &c. or in any base Court, they shall be set at liberty upon sufficient Surety. *P. Mainp. 2.*

And yet they shall not be bailed, if they be not also of good fame; but if they be of good fame they are to be bailed, although they be indicted as aforesaid (before Sheriffs, Bailiffs, Coroners or before any others such Officers, by their Office, or in any base Court: ) yet *quere* if the Justices of Peace out of their Sessions may safely bail such persons; for being indicted, they are more then vehemently suspected, &c. *Vide pag. sequent.* *Stamf. 74. Fitz. 247. & 250. B. Mainp. 97.*

One that was indicted before the Coroner, that he had killed another *se defendendo*, was (by the Justices of Gaol-delivery) bailed till the next Assizes to purchase his Pardon. 26 *El. Cromp.* 153. See *antea, tit. Misadventur.*

One that is indicted before the Sheriff for stealing of a Horse (which seemeth to have been in his Torn) may be bailed by the Sheriff (if he be of good fame) by the Writ *de Manuptione*. *F.N.B.* 249. g.

Also one that was indicted of Burglary, as Principal, pleaded Not Guilty, and was after bailed. 29 *Lib. Ass. Fitz. Mainp.* 9. See *infra*.

Another that was indicted of Robbery was bailed. 41 *Lib. Ass.* 30. *Br. Mainp.* 61.

If any Murtherer being indicted, and after arraigned at the Kings suit, shall be thereof acquitted within the year and day, the Justices before whom he is acquitted shall not suffer him to go at large, but either shall remit him again to prison, or else may bail him (at their discretion) till that the year and day be passed, to the end that the Wife, or next Heir to the party murthered, may have their Appeal of the same Murther within the year and day after the same Murther done, &c. 3 *H. 7. c. 1. Fitz.* 251. g.

Persons At-  
tainted or  
convict.

But such as are attainted or convicted of Felony are not bailable. For although it doth not appear by any words of the said Statute of *Westm.* 1. that it doth prohibit the Bailment of such as be attainted by Verdict, yet it is to be intended, that the Statute doth as well prohibit the Bailment of those attainted by Verdict, as it doth of them who be attainted by Outlawry: and therefore if a Prisoner, after he hath pleaded Not Guilty, be attainted by Verdict, That he killed a man *se defendendo*, or by misfortune, yet he shall not be bailed by the Justice of Peace. *Tamen vide antea tit. Felonies by Casualty, & Stamf.* 15. c. *F.N.B.* 246. x. 'Que il sera bail per les Justices (de Gaol-delivery) devant quens il sera try, &c.

And if a man that is arraigned of Homicide doth plead Not Guilty, and is found guilty, and doth pray his Clergy, and is reprieved without judgment, he is not bailable; for being convicted of the Felony, he is more now then vehemently suspected, and the intendment of the Law in cases of Bailment is, that it resteth indifferent whether he be guilty or not, untill Trial. *Dyer 179. See Br. Mainp. 94.*

The same reason seemeth to hold, if a man be found guilty of Homicide before the Coroner: yet see 22 *Ass. p. 94. Br. Cor.* 90. that such are bailable as are found (before the Coroner) but suspicious.

"One

"One *Poynes* was found guilty of Manslaughter before the Coroner, and it was certified in the Kings Bench; and *Poynes* at Bar prayed to be bailed, but it was denied him: For (as *Coke* said) peradventure it may be Murder. And it appears by the Statute of *Queen Mary*, that in Manslaughter the party is not always bailable, for if he confesses the fact he is not bailable; which *Haughton* granted, and said, that he is not bailable if the fact be notorious, which the Court granted. *Poynes Case, Mich. 13 Jac. Rolls Rep. part. i. p. 268.*

Also a man convicted of Felony remaineth in Prison, and after obtaineth the Kings Pardon, the Justice of Gaol-delivery may bail him till the next Gaol-delivery, that he may then come with his Pardon and plead it. 2 *E. 6. Br. Mainp. 94.*

4. Those that be charged with the receipt of Thieves or Felons, or of 4. Accessaries, commandment, or force, or of Aid (in Felony done,) be bailable.

And it seemeth that Abettors, Consenters and Procurers, and all other Accessaries to Felonies, are within the equity of this Statute, and are bailable: yea, Accessaries (as well in case of the death of a man, although it be Murther, as in case of other Felonies) are bailable (if they be of good fame) untill the Principal be convicted or attainted; but after the Principal is attainted the Accessary shall not be bailed, but kept in prison: and yet if (after the Attainder of the Principal) the Accessary shall appear, and plead Not guilty, or other Plea, it seemeth he shall be bailed. The reason is, for that when the Accessary shall make default; then is it as a *fugam fecit*, and a great cause of suspicion of the thing; but when he appeareth, by that the suspicion is now taken away, and so he is bailable. See more in *Br. Mainp. 6, 9, 22, 54, 64, & 97.*

If a man be Accessary to two, and the one Principal is attainted, though the other be not, yet the Accessary shall not be bailed.

In Felony, if the Principal die in prison, or be attainted of another Felony, the Accessary shall be bailed. *F. Cor. 378. Br. Mainp. 91.*

But note, that in case of Treason neither the Principal nor Accessary shall be bailed.

Also the said Statute of *West. 1. cap. 15.* doth no more restrain the Principals (to be bailed) then the Accessaries, in those cases where the same Statute doth not prohibit to let to Main-prise: and therefore if a man be indicted of Burglary as Principal, yet he may be bailed. *Stamf. 74. Br. 56. 29. Aff. Pl. 44.*

Also the Principal in an Appeal of Robbery may be bailed; and so may he be bailed upon an Indictment of Robbery. *Br. 61, 75, & 97.* yet in an Appeal of Robbery the Book 6 *H. 7. f. 1. b.* seems to the contrary.

But the Principal in the death of a man is not bailable, either by the Common Law, or by the Statute of *Westm. 1.* yet see hereof before in this Title, that the Justices of the Kings Bench do use to bail them. Also see there for what Homicides the Justices of Peace may bail one that is a Principal.

5. Fifthly, those that be charged with (or guilty of) any Trespass that toucheth not loss of Life nor Member, be bailable by the Statute of *West. 1. 15.* But yet let the Justice of Peace have a care, that Bail be not prohibited by any other later Statute in such cases of Trespas.

If any person be committed to prison by Process from the Sessions made upon an Indictment upon any Penal Statute (not prohibiting Bail, or for any Trespas) he may be bailed (out of Sessions) by two Justices of the Peace, the one being of the *Quorum.*

Or

Or he may have a Writ out of the Chancery directed to the Justice of Peace, or to the Sheriff, to take Surety of him for his Appearance before the Justices at their Sessions, &c. Or he may have a *Certiorari* to the Justice of Peace, to remove the Record into the Kings Bench, and a *Habeas Corpus* to the Sheriff, to remove the body thither also. *Fitz. 250. g. h. i. & 251. c.*

If Process from the Sessions shall go forth upon an Indictment of Treason, &c. it seemeth that any one Justice of Peace may take Bail of the party to appear at the day, &c. to answer to the Indictment: and the same Justice may thereupon make his *Superfedeas de cap. Indictat.* (and so of the Exigent;) for otherwise, besides the mischief of imprisonment, the party may be outlawed before the Sessions. See some precedents therein, *postea, tit. Precedents.*

Note, that the Justices of Peace are not to Bail any Prisoner, except the Prisoner be committed for such cause whereof the said Justices of Peace be competent Judges, *sc.* such Causes as they may hear and determine.

And therefore if a man be taken upon Process of Rebellion issuing out of the Chancery, the Justices of Peace are not to bail him. And M. *Crompt. 197, 234.* reporteth of two Justices of Peace who were fined for bailing one in such a case.

If a man be arrested by force of any Process, Writ, Bill, or Warrant, in any action personal, the Justices of Peace are not to bail him.

Persons condemned in any of the Kings Courts, and by virtue thereof committed to prison, and persons being in Execution upon any Statute or Recognizance, &c. at the Suit of any person, the Justices of Peace are not to bail any such.

*Approver.* 6. Sixthly, he that is appealed by an Approver, (being no common Thief, nor defamed after the death of the Approver) is bailable by the said Statute of *West. 1.* *P. Mainp. 2. Fitz. 250d.*

An Approver or Appellor is he who hath committed some Felony, which he confesseth, and then appealeth others, accusing them that they were Coadjutors or helpers with him in doing the same. *Et sic dicti, quia ad hoc probandum, quod in Appello allegarunt tenentur, idque vel Duello, vel per Patriam, sc. Furat. legalium hominum, juxta reorum electionem. Cow.*

And this Accusation by the Approver must be done before the Coroner, either assigned to the Felon by the Court, to take and record what he saith, or else may be called by the Felon himself, and required for the good of the King and the State to record his Accusation, and what he saith. *Ibid. Exceptiones contra Apellum. Vide Bract. li. 3. c. 20, &c.*

Note, that a man cannot become an Approver (or an Accuser of others) before Justices of Peace, (for that the Justices of Peace have no authority to assign him a Coroner:) nevertheless it seemeth both reasonable and serviceable, that if a Felon will become an Approver, that is, will confess his Felony, and also accuse others that were Coadjutors with him in doing the same Felony, (or other Felonies) before a Justice of Peace, that such Justice may take his Confession, and commit him to the Gaol, and may also grant out his Warrant for the apprehending of the others that are so accused. *Stam. 144. a. Br. Peace 1. Abr. d'Ass. 72, 76.*

Concerning an Approver observe these Rules.

1. One cannot be an Approver, but in Felony or Treason. *9 H. 6.*
2. One cannot be an Approver, but upon Indictment only. *1 H. 7. 5. Stamf.*



Finch.

3. An Approver must accuse the other of such an Offence as he himself did together with the other. *Statf. 143.*

Again, the Stat. of 23 *H. 6. c. 10.* taketh away Bail from all such as be in prison by Condemnation, Execution, *Capias Utlagatum*, Excommunication, Surety for the Peace, or by the special commandment of any Justice, prohibiting that such be not bailed either by the Sheriff or other Officer or Minister. *Extortion.*

There be divers other Statutes which do take away Bail from the Offenders thereof, and that not onely upon their solemn Conviction after publick Hearing, Trial, and Judgment, but also upon the Record of one or two Justices of Peace, or by private Examination and Confession of the Offender, or proof of Witnesses, or such other private Trial had before the Justices of Peace out of their Sessions: most of which I have here set down, leaving the rest to the Readers better search.

*Where Bailment is taken away by Statute.* CHAP. CLXVII. *V. 115.*

**N**O person being imprisoned or taken for any of the offences or causes hereunder mentioned, shall be bailed or let to Mainprise, otherwise then as hereafter followeth, &c. *Where Bail is taken away.*

13 E. 1. c.  
11.

Such as have abjured the Realm shall not be bailed. *West. 1. c. 15.*

Accomptants found in arrearages before Auditors shall be imprisoned (without Bail) untill they have satisfied their Master all arrearages.

Ale-house-keeper without Licence shall be committed to prison for three days without Bail; and before his delivery shall enter into Recognizance with two Sureties, that he shall not keep any common Ale-house, &c. *Vide antea, tit. Ale-houses.*

Ale-house-keeper prohibited by two Justices of Peace, and notwithstanding continuing his selling, &c. he shall be committed for three days as aforesaid. *Ibid.*

Ale-house-keepers without Licence, for their second Offence, shall be committed to the House of Correction for one moneth: and for every such their Offence after shall be committed to the House of Correction, there to remain till they be delivered by Order from the General Sessions. *Ibid.*

See antea  
tit. Ale-  
houses.

Ale-house-keepers, Inn-keepers, and Victuallers, which shall suffer Townsmen to continue drinking in their houses contrary to the Statute of 1 *Fac. c. 9.*

Or which shall sell less then one full Ale-quart of their best Beer or Ale for 1 *d.* and of the small two quarts for 1 *d.*

Such Offenders, not having sufficient whereby to be distrained for the Forfeiture, shall be committed to prison untill they have paid the penalty.

Aliens conveying Bows and Arrows into any parts beyond the Seas, without License, shall be committed untill they have made Fine, (by the discretion of the Justices of Peace in their Sessions) and given Surety for the payment thereof. 33 *H. 8. c. 9. P. Arch. 6.*

Appellers or Approvers shall not be bailed. *West. 1. c. 15.*

Nor he which is appelled by an Approver. *Ibid.*

*Armour.* Persons going or riding armed, contrary to the Statute of *Northampton*, and being thereof convict, shall be imprisoned until they have payed such Fine as shall be therefore imposed upon them. See *possea sub hoc tit.*

*Ar.*

*Arrest.* If any person shall procure one to be arrested in another man's name, he not knowing thereof, or without his consent, such Offender being convicted thereof, shall suffer six moneths imprisonment without Bail, and before his delivery shall pay to the party so arrested treble costs, damages, and expences; and also shall pay unto the person in whose name he procureth such Arrest ten pounds for every such Offence. 8 El. cap. 2. P. Dam. 3.

If any of a petty Jury in *London* shall be attainted by the Verdict of a Grand Jury, and therefore committed to prison; or if any of a petty Jury in *London* shall receive any money, or reward, or promise thereof, of the Defendants in the Attaint, for the intent to give such his or their Verdict.

As also the Defendants giving or promising such reward, &c. every such Offender being therefore committed to prison, shall there remain without bail, &c. 12 H. 7. cap. 21.

where Bail  
is taken  
away.

*Bastard.* The Mother or reputed Father of a Bastard-child, that shall not perform the Justices order, after notice thereof, shall be imprisoned until they shall put in Sureties according to the Statute. See before, *tit. Bastardy, P. Bast.* 1.

The Mother of a Bastard-child, committed to the House of Correction for her first Offence, shall there remain for one whole year; and for her second Offence for one whole year, and farther, until she can put in good Sureties for her good Behaviour, not to offend so again. See *ibid.*

Breakers of Prison are not bailable, *West.* 1. c. 15.

where  
Bail is  
taken  
away.

*Bridges* Surveyors and Collectors appointed for the repairing of Bridges, if they refuse to account for the money by them received, they shall be imprisoned until they have truly accounted, 22 Hen. 8. cap. 5. P. Bridges 4.

Burners of Houses feloniously are not bailable, *West.* 1. c. 15.

Persons conspiring to indict another of Felony, are not mainpernable or bailable, 27 Aff. Pl. 12. Fit. Mainp. 7.

Constables and Church-wardens, neglecting to levy the Forfeitures for Abuses in Ale-houses, &c. not having sufficient whereby to be distrained for their Forfeiture of forty shillings, they shall be committed to prison until they have paid the same Forfeiture. See *antea, tit. Ale-houses, 1 Fac. cap. 9.*

Constables neglecting to execute the Justices Warrant concerning Alehouses unlicensed, the Constable shall be committed to the County Gaol, there to remain without Bail, until he hath punished the Alehouse-keeper, or until the said Constable shall pay forty shillings to the use of the Poor, 3 *Caroli Regis*

Constables neglecting to whip Trespassers in Corn, Wood, Orchards, &c. (at the Justices commandment) shall be imprisoned until they have caused the Offender to be whipped. See *tit. Trespass.* See 23 H. 6. cap. 10.

Persons condemned in any of the Kings Courts, and by virtue thereof committed to Prison, they shall not be bailed until they have agreed with the Plaintiff. 1 R. 2. c. 12. 2 H. 5. c. 2. *Fitz. N.B.* 121. a.

Conjurers: *Vide* Witches.

Counterfeiters of the Kings Seal or Money are not bailable. *Westm.* 1. cap. 15.

*Cloth.* Refusers to be Overseers of Cloth shall be imprisoned until they have paid the Forfeiture. See *antea, tit. Cloth.*

Such persons as shall be convicted for making of deceiveable Cloth, if two Justices of Peace shall make Certificates thereof, and make their War-

Warrant to the Church-wardens, &c. for the levying of the Forfeitures; and if the said Offenders shall not have whereby they may be distrained for the same Forfeitures, the said two Justices of Peace may commit the Offenders to the common Gaol, there to remain without Bail, untill payment shall be made of the summes so forfeited, &c. *hic antea, Closh.*

*Deer.* Persons committed to prison for committing any Offence prohibited by the Stat. 5 Eliz. cap. 21. concealing unlawful hunting or killing of Deer, shall remain there three months and farther, untill they shall find sufficient Sureties for their good Behaviour for seven years, &c. See *hic antea.*

*Diers* using Logwood, and being thereof convicted, they shall remain in Prison without Bail, untill they have satisfied the Forfeiture, 23 Eliz. cap. 9. P. Dying 1. & 39 El. cap. 11.

Also such Offence (of using Logwood) being found by the Examination of any Justice of Peace, if the Offender shall refuse to be bound (by the Justice of Peace) to appear at the next Gaol-delivery or Quarter-Sessions, &c. then the said Justice of Peace may commit such Offender to the Gaol, there to remain untill such Offender shall be bound accordingly. See *antea, tit. Dying. 39 El. cap. 11.*

West. 1. 15.  
5 El. 23.  
Sec 23 H.  
6 C. 10.

Excommunicated persons, taken by a Writ *de Excommunicato capiendo*, or yielding their bodies to the Sheriff or other Officer, upon any Writ of *Capias* awarded, and Proclamation thereupon made, according to the Stat. of 5 El. cap. 23. provided for the due execution of the said Writ *de Excom. capiendo*, such persons shall not be bailed. *where Bail is taken away.*

*Execution.* Such persons as are in Execution upon any Statute or Recognizance, or upon Judgement given in the Kings Court at the suit of any person, they shall not be Bailed untill they have agreed with the Plaintiff, 1 R. 2. c. 12. 23 H. 6. c. 10. Fitz. Na. Br. fol. 93. c. & 121. 4. And yet then the Justices of Peace are not to bail them.

*Foefants.* See *Partridges.*

Felons taken for the death of a man are not bailable; and yet if it be not Murther, and their Offence not apparent, it seemeth they may be bailed. See *hic antea.*

2. Felons taken with the manner are not bailable. *West. 1. c. 15.*

3. Nor if it be apparently known that they did the Felony. *Ibid.*

4. Nor if they confess the Felony upon their Examination before the Justices of Peace. *Cromp. 152. b.*

5. Nor if it be a Thief openly known. *West. 1. c. 15.*

6. Nor if he be of evil fame by credible report. *Br. Mainp. 75.*

Yet in these former cases of Felony, if the Theft be not Twelve pence, or above the value of Twelve pence, the Justice of Peace may bail the Prisoner, it being no Felony of Death.

7. Nor is he which is convict or attaint of Felony bailable. See before *sub hoc tit.*

5 El. 21.  
P. Fish. 7.

Accessaries in Felony shall not be bailed, after that the Principal (or any one Principal) is attainted. But before the Principal is attainted the Accessary is bailable by the Common Law. *Stamf. 71.*

*Fish.* Destroyers of Ponds, Pools or Moats, wherein any Fish are, or unlawfully to fish in any several Pond, Pool, or Moat, to the intent to take, kill, or destroy any Fish there, every such Offender, being thereof lawfully convicted, shall have three months Imprisonment, and then shall find sufficient Sureties for their Good Behaviour for seven years after, or else shall remain in prison without any Bail, untill they have found Sureties accordingly.



2. Gagers, Packers, or Searchers of Fish, that shall take any extortion for doing their Office, shall have forty days Imprisonment without Bail. 11 H. 7. c. 23.  
P. Fish. 12.  
25 El. c. 4.  
P. Fish. 4.

3. Eaters of Flesh upon any Fish day shall forfeit and pay for every time 20 s. or else suffer one moneths Imprisonment without Bail, (after any lawful Conviction in that behalf.) 5 El. cap. 5.

Forcible Entry or Detainer; persons convict thereof shall not be bailed untill they have paid their Fine, or have found Sureties by Recognizance for payment thereof. See *antea tit. Forcible Entry*.

Forefallers, Regrators, and Engrossers, being thereof convicted, shall be imprisoned for two moneths without Bail. 5 E. 6. c. 14. P. 4.

Forgers of any Deed, Writing sealed, Will, or Court Roll:

2. And the Assenters thereto:

3. And the Publishers thereof, knowing the same, &c.

Every of the Offenders aforesaid, (in cases of Forgery) being thereof convicted, shall suffer perpetual Imprisonment during their Lives, where any mans Estate of Inheritance, Freehold, or Copyhold, shall be defeated, charged, or molested thereby: otherwise the Offenders shall suffer one years Imprisonment without Bail. 5 El. c. 14.  
P. 12.

*Fowl.* Destroyers of any Pheasant, Partridge, Pigeon, or House-dove, or of any Heron, Mallard, Duck, Teal, or other Fowl; or Shooters at any such Fowl, and the Offence proved before any two Justices of Peace, every such Offender shall be committed for three moneths without Bail, unless the Offender shall forthwith pay to the use of the Poor there 20 s. for every such Fowl so destroyed, &c. See *antea tit. Partridge*.

*Fraud.*

*Fraudulent Conveyances.* Gifts, Bonds, or Suits, &c.

1. The Parties thereto:

2. The Defenders or Justifiers thereof, or putters thereof in ure, knowing the same. 13 El. c. 6.  
P. 13.

3. And those who shall assign over any Lands, Leases, or Goods, so to them conveyed, knowing the same.

Every person being of any of these last Offences lawfully convicted, shall suffer imprisonment one half year without Bail. See more Stat.

14 Eliz. 11. & 27. c. 4.

*Games.*

*Games.* Unlawful.

1. The Maintainers of Houses, or Places for any unlawful Game. 33 H. 8. c. 4.

2. Players in common Houses or Places at any such Game.

3. Players elsewhere at any unlawful Game.

Every Justice of Peace, seeing or finding any such Offence, may imprison the Offenders till they find Sureties by Recognizance no more to offend in the premises, &c. See *antea tit. Games unlawful*.

*Gaols.* Collectors or Surveyors for Gaols (in certain Shires) refusing to make Account shall be committed to prison, there to remain untill they have made true Account, 23 H. 8. 25 El. c. 24. & 13 El. c. 25. But these Statutes are here now expired.

*Guns.* Such persons as shall harbor in, keep, carry or use any Gun, Dag, Cross-bow, or Stone-bow, contrary to the Statute of 33 H. 8. c. 6. (upon proof thereof made before any Justice of Peace) shall be imprisoned untill they have paid 10 l. for every such Offence. See *antea tit. Guns*.

No person under the degree of a Lord shall shoot in any Hand-gun within any City or Town at any Fowl, or other mark upon any Church, House, or Dove-Cote: neither shall any person shoot in any place any Hail-shot, or any more Pellets then one at one thing, upon pain to forfeit 10 l. and to have three moneths imprisonment. 2 & 3 E. 6. c. 14.

*Hares,*

*Hares.* Every person which shall shoot at, kill, or destroy, with any Gun or Bow, any Hare :

2. Or shall trace or course any Hare in the Snow :

3. Or shall take or destroy any Hare with Cords, or any other Engine : *where Bail*

Any of these last Offences being proved before any two Justices of Peace, the Offender shall be committed for three moneths without Bail, unless the Offender shall forthwith pay to the use of the Poor there 20 s. for every Hare so destroyed or taken. See *antea, tit. Partridges.* *is taken away.*

*Hatters.* Which shall take above two Apprentices :

2. Or which shall take an Apprentice for less time than 7 years.

The Offenders in either of the same cases shall suffer one moneths Imprisonment without Bail. 8 *El.c.11. P.Hats* 3.

El.21.  
P.Hawks  
1. See 11  
H.7 c.7.  
hic postea  
Partridges

*Hawks.* Takers (unlawfully) of any Hawks, or of their Eggs, out of another mans ground, and being thereof lawfully convicted, shall have three moneths imprisonment, and then shall find Sureties for their Good behaviour for 7 years after ; or else shall remain in prison without Bail untill they find Sureties accordingly.

*Hawkers* between the 1 of *July*, and the 31 of *August*, the Offence being proved before any two Justices of Peace, the Offenders shall be committed to the common Gaol for one moneth without Bail, unless they pay forthwith 40 s. for every such Hawking, and 20 s. for every Pheasant or Partridge that they shall so kill or take. 7 *Fac. 11.* See *antea, tit. Partridges.*

*High-ways.* Bailiffs and High-Constables, who shall not pay the Forfeitures by them collected, shall be imprisoned untill they have paid the same. See before *tit. High-ways, 2 Ph. & M. cap. 8. P. 11.*

*Honey.* See *Wax.*

Hottlers, or Inn-holders which shall make any Horse-bread, (contrary to the *Statute 21 Fac. cap. 21*) or which shall not sell their Horse-bread, Hay, Oats, Beans, Pease, Provender, or other kind of Victual (for Man or Beast) for reasonable gain, and be thereof lawfully convicted, &c. the second time, shall be imprisoned by the space of one moneth without Bail. 21 *Fac. Regis, cap. 21.*

So of such Hottlers and Inn-holders, as are allowed by the said *Statute* to make Horse-bread within their houses, if the Horse-bread which any of them shall make be not sufficient, lawful, and of due assize, &c. and that they be thereof lawfully convicted the second time, they shall be imprisoned one moneth without Bail. *Ibid.*

*Hunting.* If any Layman, not having in Land 40 s. per annum, or if any Priest or Clerk, not having 10 l. Living per annum, shall have or keep any Hound, Greyhound, or other Dog for to hunt, or any Ferrets, Hays, Hare-pipes, Cords, Nets, or other Engines, to take or destroy Deer, Hares, Conies, or other Gentlemens Game, and shall be thereof convicted at the Sessions of Peace, every such Offender shall be imprisoned for one whole year. 13 *R.2.c.13. P.1.*

If any person shall keep any Greyhound for Deer or Hare, not having sufficient living, and shall be thereof convicted before any two Justices of Peace, he shall be committed for three moneths without Bail, unless he forthwith pay 40 s. for having such Greyhound. See before, *tit. Partridge, 1 Fac.c.27.*

*Hunters, and Takers of the Kings Deer.* See the Statute of *Charta de Foresta, c.10.*

Hunters or Killers of any Deer or Conies (in the night or day-time) *where Bail* in any Park or Warren, or in any other inclosed Grounds, being thereof *is taken away.*

lawfully convicted, every such Offender shall suffer three moneths imprisonment, and find sufficient Sureties for his Good behaviour for the space of 7 years after, or else continue still in prison without Bail, untill he shall find Sureties accordingly. 5 *El.c.21.* 3 *Fac.c.13.* *P. Forest 9.* & 7 *Fac.13.*

The Statute of *Westm. 1.20.* provideth, That Trespassers in Parks and Ponds, being thereof attainted, shall yield to the party wronged great damages, and shall have three years imprisonment, making Fine at the Kings pleasure; and at the end of three years find good Sureties not to commit the like Trespass afterwards, or for want of such Sureties shall abjure the Realm, or be Outlawed. See *Fit.67.d.* & *Dyer 238.* 5 *H.5.f.1.* *Fit. Judgment 62.*

But note, That this Statute *de malefactoribus in Parc* extendeth onely to hunting or killing of beasts there, and not to other Trespass, 34 *E.3.f. 11.* *Fit. Judgment 144.* And if a man hunts there, or shall but come into a Park for that purpose, yet he shall be punished according to this Statute. *Fit. Judgment 62.*

The Statute 19 *H.7.11.* ordaineth, That if any person having no Park, &c. of his own, shall keep any Deer-hays or Buck-stalls; or if any person shall stalk at any Deer without Licence, the Offenders, being thereof convicted, shall be committed to prison, till they have found Surety for the payment of the Forfeiture of the Statute.

*King.* Speakers of False News, which may cause discord between the King and his People, &c.

And Speakers of False News or Lies of any of the Peers or great Officers of the Realm.

The Offenders in either of the former cases shall be imprisoned untill they have brought him into the Court who was first Author of the Tale, 3 *E.1.c.33.* 2 *R.2.c.5.* *P. News 1.* See *Dyer 155.* & 285. and the Statutes of 1 & 2 *P. & M.c.3.* 1 *El.c.6.* & 23 *El.c.2.*

3. No person committed by the special commandment of the King, or by the commandment of any of his Privy Council, shall be bailed. See *antea sub hoc tit.*

4. No person committed by the special commandment of any of the Kings Justices shall be bailed. *P. Mainp. 1.* & 23 *H.6.c.10.* See *ibid.*

5. So in all cases where a Statute ordaineth, That an Offender shall be imprisoned at the Kings will or pleasure, there the Prisoner cannot be bailed or delivered, untill the King hath signified his pleasure of him: (as if one be imprisoned for going or riding armed, contrary to the Statute of *Northampton*, made *An. 2 E.3.c.3.*) 24 *E.3.f.3.* *Br. Contempts 6.* Stand. 77.  
Br. Mainp. 40.

And in such cases the Prisoner is to redeem his Liberty with some portion of Money, as he can best agree with the King or his Justice for the same: and the Justices before whom such an Offender shall be convicted, may assess such Fine or Ransom according to their discretions, and upon payment thereof may bail the Prisoner; for the King therein signifieth his pleasure by the mouths of his Justices. See the first Title of *Forcible Entry.* Lamb. 556

Inn-keepers or Inn-holders: See *hic antea tit. Ale-house-keeper and Hosteler.*

where Bail  
is taken  
away.

*Labourers and Artificers*, departing from their Work before it is finished, shall have one moneths Imprisonment without Bail. 5 *Eliz.c.4.* *P. Labour. 10.* 5 EL.4

2. Servants departing before their Term be ended, (unless it be for some cause to be allowed by some Justice of Peace.)

3. Ser-



3. Servants departing at the end of their term, without any Quarters warning given before two lawful Witnesses.

4. Persons (compellable to serve) that upon request made shall refuse to serve for the Wages rated and appointed by Proclamation, &c.

5. Persons (compellable to serve) that have promised or covenanted to serve, and do not serve accordingly.

5 Eliz. 4.  
P. Lab. 6. Every of these four last recited Offenders (upon proof of the Offence before any two Justices of Peace, &c.) shall be committed to Ward, there to remain without Bail, untill he shall be bound (to the party offended) to serve and continue with him according to the Statute.

P. Lab. 24. 6. Persons refusing to be bound Apprentices, (according to the Statute) upon complaint thereof made to any Justice of the Peace, he may commit such Offenders to Ward, who shall there remain untill they will be bound to serve according to the Statute 5 Eliz. 4.

P. Lab. 14. 7. Women (of the age of 12 years, and under 40, and unmarried) that shall refuse to serve, shall be committed to Ward, there to remain untill they shall be bound to serve according to the Statute 5 Eliz. 4.

8. Masters giving Wages, and Servants, Workmen or Labourers, taking Wages (or other Commodity) contrary to the Rates assessed by Proclamation, &c. every such Master shall have ten days Imprisonment without Bail; and every such Servant, Workman, or Labourer, shall have 21 days Imprisonment without Bail. 5 Eliz. 4. P. Lab. 4.

9. Masters retaining or hiring a Servant for less time then for one whole Year, shall have ten days Imprisonment without Bail: but *quare* whether this extend to Servants in Husbandry, or onely to Servants to Artificers and Tradesmen. P. Lab. 1.

10. Masters retaining a Servant that is departed out of Service without shewing a Testimonial according to the Statute, it seemeth such Master shall have ten days Imprisonment without Bail. 5 El. 4.

11. Masters taking Apprentices contrary to the Statute, it seemeth by the general words of the Statute, that such Masters shall have ten days Imprisonment without Bail.

5 H. 6. 4.  
P. Liver 2. *Liveries.* Such persons as at their proper costs shall buy or wear any Livery, Cloaths or Hats, to have maintenance, and be thereof convicted, shall have one whole years Imprisonment without Bail. But this Statute is now repealed by the Statute 3 Car. 4.

In an Appeal of *Mayhem*, where upon Evidence the act shall appear to be hairious, the Offender or Defendant shall not be bailed. 6 H. 7. f. 1. si. 70.

30 Eliz. 16. *Maulting.* If any person shall disobey the Restraint of Maulting, or any other Order made in Sessions touching the same, and be thereof convicted (before any two Justices of Peace,) he shall be committed to the Gaol for 3 days, (without Bail) and after there to remain untill he shall become bound in 40 l. to perform and obey such Order or Restraint. See *antea, tit. Mault.*

If any person shall buy any Barley to Mault after such a Restraint, he shall be imprisoned as aforesaid. *Ibid.*

*Money.* Persons taken for falsifying the Kings Money shall not be bailed. *Westm. 1. cap. 15.*

*Musters.* Persons absenting themselves from Musters, being commanded to muster before any having authority for the same, and having no lawful impediment:

2. And persons (being commanded to muster as aforesaid) that shall not bring with them their best Furniture and Armour, which they have for their own person:

where Bail  
is taken  
away.

The Offender in either of the former cases shall for every such Offence suffer ten days Imprisonment without Bail, unless they agree with two of the said Commissioners to pay to the Kings use 40 s. a time for every such Offence. *P. Captains 12.*

To Muster is to make a shew of Souldiers well armed and trained before the Kings Commissioners in some open field, *ubi se ostendentes praeludunt praelio. Co. l. 71.*

And it is worthy of observation, that by the Law before the Conquest, the Musters and shewing of Armour should be *uno eodemque die per universum regnum, ne aliqui possint arma familiaribus & notis accommodare, &c.* *Ibid.*

*News.* See before *King.*

*Oath.* Refusers to take the Oath of Allegiance (being lawfully tendered to them) shall be committed to the common Gaol; there to remain without Bail untill the next Assizes or Quarter Sessions. See before *tit.*

*Oath and Recusants.*

*Parliament,* and Knights of the Parliament. See *hic postea, Sheriff.*

*Park. Hunting therein.* See *hic Hunting and Hunters.*

*Partridges.* If any person shall shoot at kill, or destroy (with any Gun or Bow) any Partridge, Pheasant, or other Fowl, &c.

2. Or shall take, kill, or destroy any Partridge, Pheasant or Pigeon, with Setting-dogs and Nets, or with any manner of Nets, Engines, or Instruments;

3. Or shall take out of their Nests, or willingly destroy in the Nest, Eggs of any Partridge, Pheasant, or Swan;

4. Or shall have or keep any Setting-dog or Net, to take Partridges or Pheasants, (except they have sufficiency of Estate, &c.)

Every of these four last recited Offenders (upon proof of the Offence before any two Justices of Peace) shall be committed to the common Gaol, there to remain for three months without Bail, unless the Offender shall forthwith pay 20 s. for every such Fowl and Egge so taken and destroyed; and 40 s. for having such Setting-dog or Net. See *tit. Partridges.*

5. Hawkers at Partridge or Pheasant in *July* or *August*, (upon proof of the Offence before any two Justices of Peace) every such Offender shall be committed to the common Gaol, there to remain for one month without Bail, unless the Offender shall forthwith pay 40 s. for every such Hawking, and 20 s. for every Pheasant or Partridge so killed or taken. See *Ibid.*

6. Persons convicted according to the Stat. of 23 *El. c. 10.* for destroying or taking of Pheasants or Partridges in the night-time shall have one months Imprisonment without Bail, unless they pay the Penalty of that Statute within ten days; and farther do become bound with good Sureties, for the space of two years not to offend so again.

7. Persons convicted according to the Statute of 11 *H. 7. c. 17.* for taking the Egg of any Hawk, or Swan, out of their Nests, shall be imprisoned for a year and a day, and fined at the Kings will. See *Hawks.*

*Perjury.* Persons committing Perjury by his, or their Deposition in any Court of Record or Court Baron, being thereof lawfully convicted, shall have six months Imprisonment without Bail. *P. Per. 1, 2. & 14 Eliz. cap. 11.*

2. So of Procurers of such Perjury, they being thereof lawfully convicted, and having not to pay the Penalty of the Statute, they shall have one years imprisonment without Bail.

*Phys.*

*Physicians.* He which is committed to Prison by the President of the Colledge of the Faculty of Physick of London, &c. shall there remain without Bail, untill he shall be discharged by the same President, or by such as he shall authorize. 1 *M. cap. 9.*

*Plague.* Refusers to pay the Rates for the relief of persons infected with the Plague, and not having whereon to be distrained for such their Rates, they shall be committed to the Gaol, there to remain without Bail untill they shall satisfie the same, and the Arrerages. See

*tit. Plague.* *Poor.* Refusers to pay their Rates towards the relief of their Poor, setting them on work, or putting out of poor Children to be Apprentices, and not having whereon to be distrained for such their Rates, they shall be committed to the Gaol, there to remain without Bail untill they shall pay the same and the Arrerages.

2. Overseers (of the Poor) refusing to make their Account, or refusing to pay (to the new Overseers) such Arrerages, summs of Mony, or Stock as shall remain in their hands upon their Account made, they shall be committed to the Gaol, untill they have performed the same. See *antea, tit. Poor.*

3. Overseers, negligent (or otherwise failing) in their Office, shall forfeit for every default 20 s. and not having whereon to be distrained for such Forfeiture they shall be committed to the Gaol, there to remain without Bail untill the said Forfeiture shall be paid. See *Ibidem.*

4. The Grandfather or Grandchild, or the Parents or Children, refusing to relieve one the other, in such manner as shall be assessed by the Justices of Peace at their Sessions, shall forfeit for every such default 20 s. for every month: and not having whereon to be distrained for such Forfeiture, they shall be imprisoned as aforesaid, untill the said Forfeiture shall be paid. See *Ibid.*

5. Refusers to pay their Rates towards the relief of the Prisoners in the Kings Bench or Marshalsea and not having whereon to be distrained for such Rates, they shall be imprisoned without Bail, untill they shall pay the same. See *antea, tit. Stock of the Shire.*

*Prayers.* Such as offend against the Statute 1 *Eliz. c. 2.* concerning Uniformity of Common Prayer and Service in the Church, and thereof lawfully convicted (by Verdict of 12 men, or by their own Confession, or by the notorious Evidence of the Fact) they shall be committed without Bail: See the Statute 1 *Eliz. 2.* for in some cases the Offender shall suffer six months Imprisonment, in other cases one whole years Imprisonment, in other cases Imprisonment during life.

*Preachers.* Disturbers of Preachers in the time of their Sermons, and their Aiders and Procurers. 1 *Mar. 3.*

2. Such as shall disturb the Arrelting of any such Offender;

3. Such as shall rescue any such Offender being apprehended;

Every such Offender (being thereof convicted before any two Justices of Peace) shall be committed to the Gaol, there to remain without Bail for three months, and farther till the Quarter Sessions, &c. But *quare* if this Statute be in force.

*Prison.* Breakers thereof shall not be bailed. *West. 1. cap. 15.*

*Prophefers,* to the intent to make Disturbances within the Kings Dominions, every such Offender being thereof lawfully convicted, for his first Offence shall suffer one years Imprisonment without Bail; and for the second Offence, shall suffer Imprisonment without Bail during dis life.

*P. Prophef. 1.*



*Purveyors* taking Purveyance within five miles of either University of Cambridge or Oxford, without Licence, &c. and being thereof convicted, they shall suffer three months Imprisonment without Bail. See *antea*, tit. *Purveyors*. 2 & 3 P.R. M.C. 15. P.Purv. 32.

*Purveyors* (or other Officer) of any Nobleman, &c. taking any thing of any Subject against his will, such Offenders shall be committed to Prison without Bail, untill they shall re-deliver the Goods so taken, or the value thereof. See *Ibid.* 23 H.6. 14. P.Purv. 1.

*Recusants*. Persons suspected to be Jesuits, Seminaries, or Massing Priests, and being examined thereof, (by any having lawful Authority in that behalf) if they shall refuse to answer directly thereto, they shall be imprisoned without Bail, untill they shall make direct answer thereto. 35 Ed. cap. 2. 15 El.

2. Persons suspected, if they shall refuse to answer the Justice of Peace upon Oath, whether they be Recusants or no, they shall be committed to the common Gaol, there to remain without Bail, untill the next Assizes or Quarter-Sessions. See *antea*, tit. *Recusants*. 2 Jac. 4.

3. Popish Recusants refusing to take the Oath of Allegiance, (being lawfully tendred them) they shall be imprisoned till the next Assizes or Quarter-Sessions as aforesaid. See *Ibid.*

4. Every other person of the age of 18 years, refusing to take the Oath of Allegiance, shall be committed untill the next Assizes or Quarter-Sessions as aforesaid. See *antea*, tit. *Oath*. 7 Jac. 6.

5. A Woman Recusant convicted, and not conforming her self, being therefore committed to Prison, shall there remain without Bail, untill she shall conform her self, &c. See *antea*, tit. *Recusants*. Ibid.

6. A Woman covert refusing in the open Assizes, or at the Quarter-Sessions of the Peace, to take the Oath of Allegiance, she shall be committed to the common Gaol without Bail, untill she will take the said Oath. 8 Jac. 4. 7 Jac. 6.

7. If any Woman, or Child under the age of 21 years, shall pass over the Sea without lawful Licence, the Master of any Ship permitting the same shall suffer Imprisonment 12 months without Bail. 1 Jac. 4.

8. Recusants refusing to declare what Armour, &c. they have, or if they or any other person shall hinder or disturb the delivery of such Armour to any person lawfully authorized to seize the same, every such Offender shall have three months Imprisonment without Bail. 3 Fac. cap. 5. P.Rec. 79.

9. Recusants and Sectaries which shall impugn the Kings Authority, in causes Ecclesiastical: P.Rec. 18. 35 El. 1.

where Bail  
is taken  
away.

10. Or that shall persuade others thereto, or from coming to Church, to that end and purpose:

11. Or shall meet at any Conventicles, under colour of any Exercise of Religion (contrary to His Majesties Laws:)

12. Or shall persuade any other to meet at any such Conventicles or Meetings.

Every person which shall be lawfully convicted of any of these last four Offences shall be committed to Prison, there to remain without Bail, untill they conform themselves to come to Church, and make open submission and declaration of their said Conformity.

13. Persons absent from Church upon any Sunday, and not having whereon to be distrained for the Forfeiture, shall be committed untill payment be made thereof. See *antea*, tit. *Recusants*. 3 Jac. 4. P.50.

Persons above the age of 16 years, which shall absent themselves from the Church by the space of one moneth, and shall be thereof lawfully convicted, shall forfeit for every moneth 20 l. And if he shall not be able, or shall fail to pay the same within three moneths after Judgment thereof given, he shall be committed to prison, there to remain untill he hath paid the said summe, or conform himself to go to Church, &c. 23

*Elc. 1. P. 14.*  
So of such persons as shall keep any Schoolmaster, which shall absent themselves from the Church as aforesaid, or which shall not be allowed by the Ordinary, if such persons shall not be able, or shall fail to pay the Penalty, (sc. 10 l. for every moneth) within three moneths, &c. he shall be committed without Bail, as aforesaid. *Ibid.*

Persons convicted for Recidivism are notailable. *Merton cap. 3. Fitz. 66.*

Rioters attainted of great Riots shall have one years Imprisonment without Bail. *P. Riots 11.*

All persons convicted (by the view of the Justices, or upon their inquiry, or otherwise) of any Riot, shall be committed untill they have paid their Fine. See before *tit. Riots.*

Rogues incorrigible, committed to the Gaol or House of Correction, shall remain there untill the next Quarter Sessions. See *ante tit. Rogues.*

*Servants. See Labourers.*

Schoolmaster that is a Recusant,

2. Or that is not allowed by the Ordinary, and being of either of the said Offences convicted, shall be imprisoned for one whole year without Bail.

Sheriffs not making their Election of Knights for the Parliament in their full County, between the Hours of 8 and 11 in the Forenoon.

2. Or returning Knights for the Parliament contrary to the Statute, and being of either of the said Offences attainted before the Justices of Assize, they shall be imprisoned for one whole year without Bail.

Sheriffs, Under Sheriffs, or other persons, making any Warrant for the Summons, Arresting, or Attaching of any person to appear in any Court, not having the original Process or Writ warranting the same, upon examination and proof thereof before the Judges of Assize, or Judges of the Court, &c. such Offenders and their Procurers shall be committed to the Gaol, there to remain without Bail, untill they have paid (among them) 10 l. to the party grieved, and his Costs and Damages, and also 20 l. apiece to the King. 43 *Elc. 6.*

Souldiers, who have purloyned their Horses or Harnes, shall be committed without Bail, untill they have satisfied the party grieved, his Executors or Administrators, for such Horse or Harnes. See before, *tit. Souldier.*

Stock of the Shire. Refusers to pay their Rates thereto, and not having whereon to be distrained, &c. shall be committed till they have paid it. *Vide ante tit. Stock.*

Subsidy. If any person assessed to the Subsidy shall not pay the same, by reason whereof his body shall be arrested upon a Precept directed out by the Commissioners of the same Subsidy, &c. he shall remain in prison without Bail untill he hath paid the said summe wherewith he is chargeable; also for the Fees of such Arrest, &c. to him or them that shall execute such Precept 20 d. See the *Statutes of Grants of Subsidie.*

Tithes. The Defendant in a Suit for Tithes that disobeyeth the Judges Sentence shall be committed without Bail, untill he shall find sufficient Sure-

where Bail  
is taken  
away.

Sureties by Recognizance, &c. to obey and perform that Sentence. *Hide tit. Tithes.*

*Transportation.* The Masters or Mariners transporting any Corn, Beer, Herring, Whitage, or Wood, without Licence,

2. The Owners of such things transporting more then they are licensed: *P. Corn, 23. 1 & 2 P. & M. 3. 5.*

3. The Mariners carrying such things into any Ship to be transported:

Every such Offender shall be imprisoned one whole year without Bail; and yet see *antea tit. Transport.* that every man may transport Corn without Licence, (or danger, as it seems) it being at the price there mentioned.

4. The Master or Mariners transporting, or shipping to that intent, any Leather, Tallow, or Raw Hides, and being thereof convicted, shall have one years Imprisonment without Bail. *18 Eliz. 1. P. Leather 50.*

5. Transporters of Live Sheep:

6. And every person that shall bring, deliver, send, receive, take, or procure any Live Sheep to be conveyed out of any the Kings Dominions, their Aiders, Procurers, and Comforters. *8 Eliz. 2. P. Sheep 1.*

The Offenders in either of the former cases, being thereof convicted, shall for the first Offence suffer one whole years Imprisonment without Bail.

7. The Master of any Ship permitting any Women or Children under 12 years of age to pass over the Seas without Licence, shall suffer 12 moneths Imprisonment without Bail. *1 Jac. 4.*

8. Aliens transporting Bows or Arrows. See *Aliens.*

If any man shall transport or convey any Horse, Mare, or Gelding out of England without Licence, &c. and be thereof lawfully convicted, he shall suffer Imprisonment by the space of one whole year. *1 E. 6. c. 5.*

where Bail  
is taken  
away.

*Treason.* Persons committed for Treason touching the King are notailable. *West. 1. c. 15.*

Counterfeiters of Money, or of the Kings Seal, are notailable. *West.*

*1. c. 15. Br. Mainp. 59.*

*Vagabonds.* See before *Rogues.*

*Utlawed persons,* taken for the same, are notailable. *West. 1. 6. 15. & 26 H. 6. c. 10.*

*Wards.* By the Statute of *West. 2. c. 35.* if any person shall ravish (i. e. shall take and carry away) any Ward, the Offender shall have two years Imprisonment; and if he do not restore, or do marry the Child after the Years of Consent, and be not able to satisfie for the Marriage, he shall abjure the Realm, or have perpetual Imprisonment. And it is said, That it is at the election of the Justices to award the Offender to abjure the Realm, or to have perpetual Imprisonment: and that if the Justices shall award him to perpetual Imprisonment, that the King cannot pardon him that Imprisonment, for that it is in lieu of Damages to the Plaintiff, and that Imprisonment is an Execution thereof, the which the King cannot pardon without the assent of the Party Plaintiff.

*Wax,* and Vessels of Honey, if any person shall counterfeit any the Marks thereof, or shall mark them with any other Mans Mark, and shall be thereof convicted, he shall suffer three moneths Imprisonment without Bail. *23 Eliz. 8. P. Wax 7.*

*Weights.* Falsifiers or Counterfeiters thereof, such Offenders (after they be indicted thereof) shall be taken and imprisoned without Bail, untill they be acquitted or attainted: and if they be attainted, they shall *P. Just. of peace 61. P. Weights 13.*



shall remain in prison untill they have made Fine and Ransom, according to the Justices discretion. *9 H. 8. Parl. 2. Quere* whether this Statute be now in force.

*Witches, Conjurers, Sorcerers, and such others,* which shall take upon them to hurt any persons in body, though it be not effected :

2. Or shall take upon them to tell any Treasure or Goods (lost or stolen) where it may be found :

3. Or shall take upon them to provoke any person to Love :

4. Or shall hurt any Cattel or Goods thereby :

Every such Offender, being of any the said Offences lawfully convicted, shall have one whole Years Imprisonment without Bail.

*Women.* Taking of Women (unmarried, and under the age of 16 years) out of the possession of their Parents, or other person having lawfully the keeping, &c. of them, and against their wills, the Offender being thereof convicted, shall be two years imprisoned without Bail, &c.

2. Taking away and deflowering such Maid or Woman Child, as aforesaid :

3. Contracting of Marriage with such a Maid, against the will of, or unknown of or to the Father of such a Maid, (if he be living) or against the will, &c. of the Mother, having the custody and governance of such Child :

The Offenders in these two last cases, being thereof lawfully convicted, shall have five years Imprisonment without Bail, &c.

See more concerning Women, *antea Recusants.*

"There be divers other Statutes made since the Publication of the Author, which take away Bail, but they being abridged in the first part of this Book under their proper Titles, I forbear to repete them.

# Recognizance. CHAP. CLXVIII. V. 116.

A Recognizance is a Bond of Record, testifying the Recognizor to owe a certain summe of Money to some other ; and the acknowledging of the same is to remain of Record : and none can take it but onely a Judge or Officer of Record.

And these Recognizances, in some cases, the Justices of Peace are inabled to take, by the exprefs words of certain Statutes : but in other cases (as for the Peace, and Good behaviour, and the like) it is rather in congruity, then by any exprefs Authority given them, either by their Commission or by Statute.

Note, wheresoever any Statute giveth them power to take a Bond of any man, or to bind over any man to appear at the Assizes or Sessions, &c. or to take Sureties for any matter or cause, they may take a Recognizance. Yea, wheresoever they have Authority given them to cause a man to do a thing, there it seemeth they have (in congruity) power given them to bind the party by Recognizance to do it. And if the party shall refuse to be bound, that then the Justice may send him to the Gaol ; for it is a Rule in Law, *Concesso uno aliquo, etiam id concedi videtur sine quo, prius concessum haberi nequit.* But yet inquire of this last Case, for there is also another Rule, *In generali concessione non veniunt ea, qua, quis non esset verisimiliter in specie concessurus.*

I will here set down onely some particulars where the Justices of Peace (out of their Sessions) may take a Recognizance.

§ 2. One Justice of Peace may take a Recognizance for the Peace.

Also one Justice of Peace may take a Recognizance for the Good Behaviour (by the Commission :) and these the Justice of Peace may take either upon discretion, or upon complaint made to him, or upon a *Supplicavit* delivered to him.

One Justice of Peace may bind by Recognizance such as do declare any thing against a Felon, to appear at the Affizes or Sessions, there to give Evidence against the Offender : and so in divers other cases.

One Justice of Peace may bind by Recognizance such as keep any common houses or places for Unlawful Games, that they keep the same no longer. See *antea, tit. Games, &c.*

And also such as play at unlawful Games, contrary to the Statute of 33 H. 8. cap. 9. that they use the same no more.

One Justice of Peace may bind over persons suspected to use Logwood in Dying, and such as can discover the same. See *antea, tit. Dying.*

One Justice may bind by Recognizance takers of Partridges, &c. and Hawkers in Corn, to appear at next Sessions, to answer their said Offences. See *antea, tit. Partridges.*

One Justice of Peace may bind by Recognizance any person convicted for taking or destroying any Pheasants, Partridges, Fowl, or Hare, that they offend not thereafter in any the particulars any more.

Also they use (by way of prevention) to bind Tramellers for Larks, that they shall destroy no Partridges, &c. *Quare* of this, how it is warranted. See *postea, tit. Warrants.*

But the binding of Tramellers in this sort seemeth rather to do hurt then good, in that it doth enable to tolerate the use of Tramelling in the night-time, whereby many Partridges are secretly taken and killed ; whereas any two Justices of Peace may more legally prevent that night-taking and destroying of Partridges, by taking away all such Nets, where they shall see cause ; the which they may do by force of the Stat. 7 Jac. c. 11. which see here before, *tit. Partridges.*

I have known sundry Proclamations, authorizing and commanding the Justices of Peace (at or before the beginning of the Lent-time) to convene and call before them all Taverners, Inn-holders, Ale-house-keepers, keepers of Ordinary-Tables, and other Victuallers within the Precinct and Rule of the said Justices, and to take Bonds (by Recognizance) with sufficient Sureties of every of them, and in good summes of Money, to the Kings Majesties use, that they shall not dresse any Flesh in their houses in the Lent-time, for any respect, nor suffer it to be eaten there.

One Justice of Peace may bind by Recognizance the Master that shall misuse his Apprentice, &c. to appear at the next Sessions, &c. See *antea, tit. Apprentices.*

Two Justices, &c. may take Recognizance of Ale-house-keepers for keeping good Orders, &c. See before.

They may bind by Recognizance an Ale-house-keeper (committed for Victualling without Licence) that he shall keep no more an Ale-house. See *antea, tit. Alehouses.*

Two Justices, &c. may bail Prisoners, and upon such Bailment they are to cause the Prisoners to find Sureties for their appearance, &c. which must be done by their Recognizance. See here, *tit. Bailment.*

They may bind the Overseers of Cloth by Recognizance, to see the Statute observed. See hereof *antea, tit. Cloth.*

Also

Also two Justices of Peace may bind by Recognizance the Defendant in a Suit of Tithes, to obey the sentence of the Judge. See *antea*, *tit. Tithes*.

Whether the Justices of Peace may bind an Offender against a penal Statute, to appear and answer his fault at the Sessions; see hereof *postea*, *tit. Warrants*, cap. 128.

33 H. 8. 39  
P. Ac. 1.

Note, That every Obligation and Recognizance taken by Justices of Peace must be made to the King, and shall be made by these words, *To whom*, *Domino Regi*, upon pain of Imprisonment of any person that shall take it otherwise: And all such Bonds or Recognizances shall be in the nature of a Statute-Staple to all intents. See hereof *postea*, *tit. Recognizance*.

A Justice of Peace can take no Recognizance, but onely for such matters as concern his Office. See hereof, *tit. Surety for the Peace*, *antea*.

Note also, That a Recognizance taken by a Justice of Peace is a matter of Record presently, so soon as it is taken and acknowledged, although it be not made up, but only entred into his Book; nay, although it be not entred, as it seemeth. See *Stamf. 77. a. & Br. Record 58*. such a matter.

If a Justice of Peace shall take a Recognizance where he hath no Authority, it seemeth void.

And these Recognizances taken by the Justices of Peace are to be certified by them at their next Quarter-Sessions: except Recognizances taken of such as shall inform against Felons, and upon Bailment of Felons, which by Statute they are appointed to certify at their next General Gaol-delivery. See *antea*, *tit. Felony*.

For the forms of Recognizances see hereafter, *tit. Recognizances*, cap. 134.

Warrants. CHAP. CLXIX. V. 117.

Now concerning the Precepts or Warrants to be made by the Justices of Peace:

§ 1.  
By Parol,

Lamb. 87.

The Justice of Peace (seeing that he is a Judge of Record) his Precept or Commandment by word of mouth (in some cases) is as strong as his Precept in writing.

14 H. 7. 8.  
9.

And therefore the Justice of Peace, upon any Rior done in his presence, may command the Rioters to be arrested, and cause them to find Sureties for their Good Behaviour.

So upon an Affray, Assault, Threatning, or other breach of the Peace done in his presence, the Justice of Peace may command by word the Officer being present, or his own servant, to arrest such Offenders to find Sureties for the Peace. See before, *tit. Surety for the Peace*.

And where the Justice of Peace commandeth one being present to arrest another that is also in his presence, though that commandment be by word onely, it is good, and it is reputed as an Arrest made by the Justice himself, he being present when the Arrest is made. *B. F. Imprif. 33*. See *his antea*.

Moors  
Rep. p.  
401.

"One in a False Imprisonment justified that the Plaintiff being in presence of a Justice of Peace, the Justice not having opportunity to examine him, commanded the Defendant to take him into custody, and keep him safely untill next day, the which he being Constable did  
"do;



"do: and this was holden a good Justification, without shewing the cause the Justice of Peace had to imprison him, and without shewing the Warrant, because it was done in the presence of a Justice of Peace: *Broughton id. Mulsoe, T. 37 El.*

But the Justices of Peace cannot command by word to arrest another being out of their presence; neither may one in the absence of the Justice arrest another upon his command by Parol, but it must be by a Precept or Warrant in writing, by the greater Opinion of the Justices. 14 H. 7. 2. Br. Peace 7.

And yet in case of Rioters, the Justice of Peace may by word command his servants to arrest them, in the absence of the Justice; by the Opinions of *Fineux* and *Tremale*, Justices. See hereof *antea, tit. Riots.* 14 H. 7. 9. 10.

§ 2. Next their Warrant or Precept by writing ought to be under their hand and seal, or under their hand at least. See *hic infra.*

*The Form.* And if it be for the Peace or Good Behaviour, or the like, where Sureties are to be found or required, there the Warrant ought to contain the special cause and matter whereupon it is granted, to the intent that the party (upon whom it is to be served) may provide his Sureties ready, and take them with him to the Justice of Peace to be bound for him; but if the Warrant be for Treason, Murther, or Felony, or other capital Offence, or for great Conspiracies, Rebellious Assemblies, or the like, it needs not contain any special cause, but there the Warrant of the Justice of Peace may be, to bring the party before him, to make answer to such things or matters generally as shall be objected against him on the Kings Majesties behalf: and this is now the common usage, by the report of M. *Crompton.* Crom. 148.

And I once received a Warrant, brought me by one *Thomas Evans*, (a Pursivant or Messenger of his Majesties Chamber) under the hand of the Right Honourable *Tho. Lord Ellesmere*, late Lord Chancellour of England, for the apprehending of one *James Malin*, for a matter of Contempt; and the said Warrant was in general words, *scil.* to answer to such matters as were objected against him, without any special cause therein mentioned. An. Don. 1607.

Also I saw another Warrant granted under the hand of *Pop. Chief Justice*, to bring one *Edmonds* (of *Barnwell* by *Cambr.*) before him, to answer to such matters as he had to object against him on the Kings Majesties behalf, without any special cause or matter therein set down. 3 Jac.

The like form you shall find in the Book of *Entries, tit. Attachment: Non omittas, &c. quin attach. E. H, &c. ita quod habeas corpus ejus coram Justic. nostris ad Assisas in Com. tuo capiend. assign. apud W. in Octab. Sanct. Mich', ad respond. nobis de his que sibi ex parte nostra tunc ibidem objiciuntur, & ad faciendum ulterius & recipiend. quod Curia nostra de eo consider. in hac parte, &c.*

But it is not safe for a Justice of Peace to grant out his Warrant with a blank: for about 30 *Eliz.* one wrote to Sir *I. R.* a Justice of Peace, to send him a Precept or Warrant with a blank, that he might put therein one whom he would attach upon suspicion of Felony; and the Justice of Peace did so, (granting a warrant with a blank, where he neither knew the parties name nor the matter;) and for this the Justice was fined in the Star Chamber, as M. *Crompton* reporteth, *Author. des Courts* 34.

§ 3. Also the Warrant of the Justice of Peace should be under the Seal of the said Justice: for every Justice of Peace (being a Judge of Record) hath a Seal of his Office; and when he maketh a Warrant under his Seal

Seal to the Officer, then the Officer ought to give credence to the Seal, for that is his Authority, *per Brudenel*. 14 H. 8. 16.

Again, the Warrant of the Justice of Peace is the better, if it bear date of the place where it was made; and it must express the year and day when it was made. See 21 H. 7. 12.

A Justice of Peace who is dwelling out of the County granteth his warrant to be served within the County; the Officer cannot carry the party out of the County to the Justice of Peace who made the warrant, but must carry him before some other Justice within the County. § 4. Out of the County.

*Quære* whether such a warrant be good or no.

First, for that a Justice of Peace hath no Authority but in the County where he is a Justice; and in Commission. See *antea*.

And again, for the date of the place seemeth to be material by the Books 14 H. 8. aforesaid, & 21 H. 7. 22. *Pr. fx. imp.* 12.

The Justice of Peace may make his warrant to bring the party before himself, and then the Officer needs not to carry the party before any other Justice. And yet upon a warrant for the Peace granted *en officio*, the usual manner is otherwise. See *antea*, tit. *Sureties for the Peace*. § 5. Return.

Also the Justice of Peace may in some cases make his warrant to attach the Offender to be at the next Sessions of the Peace, there to answer his said Offence, &c. See *antea*, tit. *Counterfeitures*, & *postea*, *Warrants*.

If a Justice of Peace shall make his warrant to the Sheriff to attach one, and to bring him to the next Sessions, there to find Sureties for the Peace, &c. it is good. *Crompt.* 135, 136.

So if the Justice shall make his warrant to warn a man to appear at the next Sessions, there to give in Evidence for the King; and where the Justice shall command one by his warrant to be or appear at the next Sessions, &c. if the party do not appear, then from that Sessions there shall go out a Precept to attach him for such his contempt. *Crompt.* 123.

A Justice of Peace (*ex officio* by the first *Assign* in the Commission) may grant his Warrant to arrest or attach one that hath broken the Peace, or committed other misdemeanor against the Peace, to find Sureties for the Peace or good Behaviour, as the cause shall require. § 6. For what cause.

Also the Justices of Peace in divers cases do use to grant their Warrant against a man for his neglect or other default, as for refusing to pay Town-rates, and the like: And such Warrant may be either to attach the Offender to be at the next Sessions, there to answer, &c. or else to bring the Offender before the said Justice, or any other Justice; who, finding cause, may bind such an Offender to appear at the next Sessions to answer the said default.

Also wheresoever any Statute doth give authority to the Justices of Peace to cause another person to doe a thing, there it seemeth they have power given them (of congruity) to grant their Warrant to bring such persons before them, that so they may take order therein. See *antea*, tit. *Recognizance*.

But I find it much controverted, whether a Justice of Peace may grant a Warrant to attach persons suspected of Felony, or against Offenders upon a penal Statute, unless such persons or Offenders be first thereof indicted; for that the Justice of Peace, as he is a Judge of Record, so it is said he must have a Record, whereupon he doth award his Process or Precept. § 7. Where not before indicted.

For the first, some hold that the Justice of Peace may grant his Warrant to attach persons suspected of Felony: for that it seemeth by the first *Assignavimus* in the Commission, and by the Statute of 5 Ed. 3. 14. that any one Justice of Peace may cause the Constables to arrest and imprison Offenders suspected of Felony, &c. and how shall the Justice of Peace cause this to be done, but by his Warrant or Commandment?

Again, if a Felony be done, there is no doubt but that every private man without a Warrant may arrest whomsoever he suspecteth of it, being a man of evil fame, &c. See hereof *tit. Arrest*. But if the Offender being pursued shall resist, *quare* who shall be aiding to a private man, whose goods are stolen, and who suspected another to have stolen them, either to search for his goods, or to apprehend the party suspected, if the Justice of Peace (by his Warrant) shall not command the Constable to aid him therein. If it be objected, that the Constable may do all this of his own authority, (upon request to him made by the party robbed :) be it true; yet we find by common experience that the Constables, without the Justices Warrant therein, are for the most part both very fearful, and also remiss herein, as neither knowing their own Authority, nor the danger.

Besides this is no new thing, for there is such a precedent in the old Book of Justices of Peace, *impress. 1561. fo. 41. a.* yea, it is the common practice at this day, and it seemeth to be very serviceable, and of two evils the less is to be chosen, *sc.* that an Offender, or suspected person, should be imprisoned for a time, (though sometimes wrongfully) rather than one which hath committed Felony should escape unpunished.

And yet by the Opinion of the Court 14 H. 8. a Justice of Peace cannot make a Warrant to arrest a Felon, unless he be indicted of Felony, (or that the Justice himself hath suspicion of the Felon.) But if the Constable, or other Officer, shall serve such a Warrant, he shall justify the same, though the Justice did erre in the awarding thereof. See 24 E.

3. 9. Next, for the Justices of Peace to bind over, or to grant a Warrant against Offenders upon any Penal Statute, to appear at the Sessions to answer to their Offence or Fault, though such Statute be within the power of the Justice of Peace, yet such Warrant or binding over of such Offenders may seem not warranted, unless it be specially so appointed in the Statute, as it is by the Statutes of 5 Ed. 4. 23 El. 10. 39 El. 11. 33 H. 8. 1. See *antea tit. Counterfeiters, Dying, Labourers, and Sacraments*.

But such Offenders ought first to be indicted, and thereupon Process from the Sessions is to be awarded against them untill they come in, &c.

"No one or more Justices of Peace can make a Warrant upon a bare surmise to break any mans House to search for a Felon, or for stolen Goods; for they are constituted by Acts of Parliament, which Acts give them no such Authority. It would be inconvenient if they might so do. But if a man be indicted for Felony, the Sheriff upon Process may demand him; and if he render not himself, may break the House. Co. 4. Inst. 9. 176.

And yet there be sundry Precedents of Attachments made from one Justice of Peace against Labourers and Servants that shall refuse to serve, or that shall depart out of their Service, contrary to the Statute,

See ante  
tit. Exem.  
& 2 H. 7.  
15. 16.  
pro &  
contra.

Lamb.  
193.

14 H. 8. 16  
Br. Peace  
6.  
Br. Pr.  
Imp. 3. 89  
Co. 10. 96

Lam. 191.  
Crom.  
197.  
The in-  
conveni-  
ence  
thereof.  
See Lamb.  
197.

Crom.  
238.  
Lam. 191.



tute, to be before the Justices at their Sessions, to answer to their said Defaults. But these may seem also to have been warranted, and so appointed by the Statute of Labourers, made *An. 25 E.3.c.6.* which Statute is now repealed by the Statute of *5 El.4.*

Also it is usual (by way of prevention) to bind by Recognizance such as do trammel for Larks, that they shall destroy no Partridges; as also to bind by Recognizance Butchers, and all Victuallers, that they shall not kill nor dress any Flesh in Lent time, contrary to the Laws. And for these purposes the Justices of Peace do grant out their Warrants to convene the said persons before them. For Victuallers, (*sc.* Taverners, Inn-keepers, Ale-house-keepers, keepers of Ordinary Tables, and other Victuallers) I have known sundry Proclamations which seem to warrant the Justices of Peace therein. But for the other, what Law or Warrant there is for it I know not, untill the Offender is convicted. See *hic tit. Partridges.* Yet see *antea*, where the Justices may in some cases grant their Warrants against Offenders upon Penal Statutes. 'But there the Justices have power to hear and determine out of the Sessions.

'Also where the offence prohibited by such a Statute amounteth to the Breach of the Peace or Good Behaviour, there it seemeth the Justice may (either upon discretion, or complaint of such an offence and breach of the Statute) grant out his Warrant, and bind over the Offender to the next Quarter Sessions, &c. to answer his said Default, and in the mean time to be of the Good Behaviour. See *hic, Servants assaulting their Master.*

14H.8.16  
Br. Peace  
6. The Justice of Peace may direct his Precept or Warrant to the Sheriff, Bayliff, Constable, or other Officer, or to any other indifferent person by name, though he be no Officer, yea to any person that he shall think meet; but yet the safest way is to direct it to the Constable, or to some other sworn Officers. § 7.  
To whom directed.

A Warrant directed by the Justice of Peace to the Constable, or other sworn Officer, and to a stranger who is no Officer, and the Warrant is made *conjunctim & divisim*, and is delivered to the stranger, who executeth it; all this is good.

Crom.  
147. A Warrant directed by the Justice of Peace to two men joyntly, to arrest another, &c. yet any one of them alone may do it.

A Warrant directed by the Justice of Peace to the Sheriff, he may by word command his Undersheriff, Bayliff, or other sworn or known Officer, to serve it, without any Precept by writing.

Lamb.91. And so the Sheriffs servant, or other person by the Sheriffs commandment, and as a servant to the Sheriff, may serve or execute such Warrant without any Precept by writing. See *Br. Ex. Impr. 43. & Treaspass 339.*

But otherwise if the Sheriff will command another man (that is a stranger) to serve it, he must deliver him a Precept in writing; otherwise a Writ of False Imprisonment will lie for the Arrest.

8E.4.14.  
14H.7.2.  
b.  
20H.7.13  
21H.7.24  
Co.9.69. A Warrant directed by the Justice of Peace to the Sheriffs Bayliff, or to the Constable, or to the Justices servant, or to a stranger, to arrest one, &c. such person (to whom the Warrant is made) must serve it himself, for these can command none other to do it neither by word nor writing, nor make any Deputy.

The Officer to whom any warrant shall be directed and delivered, ought with all speed and secrecie to seek and find out the party, and then to execute the said warrant. § 8.  
The Officers Duty.

A sworn and known Officer (be he Sheriff, Undersheriff, Bayliff, or Constable, &c.) needs not to shew his Warrant to a man whom he cometh to serve it upon, although he demandeth it: But if the Justice will direct his Warrant to his Servant, or to another (who is no sworn Officer) to serve it, they must shew their Warrant to the party if he demand it, or otherwise the party may make resistance, and needs not to obey it. *Br. Ex. Impr. 23.*

But a sworn and known Officer, if he will not shew his Warrant to the party, yet he ought (upon the Arrest) to declare the Contents of his Warrant, &c. Co. 6, 54.  
& 9, 58.

And an Officer giveth sufficient notice what he is, when he saith to the party, *I arrest you in the Kings Name, &c.* and in such case the party at his peril ought to obey him, though he knoweth him not to be an Officer; and if he have no lawful Warrant, the party grieved may have his Action of False Imprisonment against him. Co. 9, 59.

If an Officer do arrest a man for the Peace, or the like, before that he hath any Warrant, and then afterwards doth procure a warrant, (or a Warrant cometh after to him) to arrest the party for the same cause, yet the first Arrest was wrongful, and the Officer is subject to an Action of False Imprisonment. See the Stat. 43 *El. c. 6.* Dyer 244  
R. Bar. 248.  
Lamb. 93.

Where there be two or three known by the Name of *I. S.* of *D. Yeoman*, and upon a warrant (or other Process) granted out against one of them, another of them is arrested, an Action of False Imprisonment will not lie against the Officer for this; for the Officer is not bound at his peril to take notice which of them is the Offender, &c. And perhaps no particular offence is mentioned in the warrant. *Tamen vide L. 5 E. 4. fol. 51. & 48. pro & contra; & 11 H. 4. fol. 90. contra. Ideo quare.*

Where a Warrant is granted out against *I. N.* the son of *W. N.* and the Officer thereupon arresteth *I. N.* the son of *T. N.* although in truth he be the same person that offended, and against whom the Complaint was made, yet this Arrest is tortious, and the Officer subject to an Action of false Imprisonment. See the like matter, 10 *E. 40. f. 12. Br. Faux Imp. 38.*

§ 9. *How to be ex. cued.* The Officer, upon any Warrant from a Justice of Peace for the Peace, or good Behaviour, or in any other case where the King is a Party, may by force break open a mans house, to arrest the Offender, &c. See hereof *antea*, in the former title, *Forcible Entry.*

If any Officer or other person hath arrested a man by virtue of his Warrant, which he hath from a Justice of Peace, and then taketh his promise that he will come again to him such a day, to go to the Justice with him according to his Warrant, (and so letteth the party go) who comes not again at the day appointed, it seemeth the Officer cannot after arrest or take him again by force of his former Warrant; for that this was by the consent of the Officer: But if the party arrested had escaped (of his own wrong) without the consent of the Officer, now upon fresh sute the Officer may take him again and again, so often as he escapeth, although he were out of view, or that he shall fly into another Town or County. See more *postea*, *tit. Imprisonment, & L. 5 E. 4. fol. 12. Br. Faux imp. 18.* See Cro. 214. a. & 148.  
Co. 144. 52.

Where an Officer hath received a Warrant, he is bound to pursue the effect of his Warrant in every behalf, or otherwise his Warrant will not excuse him of that which he hath done. See *antea*, *tit. Surety for the Peace.*

If

21 H. 7. 39 If an Officer, having a lawful Warrant to arrest another, shall be resisted or assaulted by the party, or by any other person, then may that Officer justify the beating or hurting of such persons; and others (upon his prayer) may and ought to aid the Officer. § 10. Resistance.

14 H. 8. 16 If a Justice of Peace shall make any Warrant for a matter wherein he hath Jurisdiction, although it be beyond his authority, yet is it not disputable by the Constable, or other such Officer, but must be obeyed and executed by the Officer; as if the Justice of Peace shall make his Warrant to arrest one for the Peace or Good Behaviour, &c. without cause, the Officer shall not be punished for executing this: But if a Justice of Peace shall make his Warrant to do a thing out of his Jurisdiction, or in a cause whereof the Justice of Peace is no Judge, if the Officer shall execute such a Warrant, here he is punishable; for the Officer is not bound to obey him who is not Judge of the cause, no more than a meer Stranger: and so note, That the Officer is bound to take notice of the Authority and Jurisdiction of the Judge. See such a matter, 22 Aff. 64. Pl. 394. b. Cro. 106.

Crom. 149. If any man shall abuse the Justice of Peace his Warrant, as by casting of it into the dirt, or treading it under his feet, &c. it seemeth he may be bound to his Good Behaviour therefore, and may also be indicted and fined therefore, for it is the Kings Process. § 11. Contempt.

When any person cometh before a Justice of Peace, by force of any warrant for the Peace, Good Behaviour, or for a Riot, or the like, the party must offer Sureties, or else the Justice may commit him. See *antea*; *in. Sureties for the Peace*.

If a Justice of Peace shall grant his warrant to one to apprehend another for Murther, Robbery, or Felony, it shall be safe for the Justice upon the delivery of his said warrant, to take (upon Oath) the Examination of the said party that requireth the warrant, or at least to bind him over by Recognizance to give Evidence at the next Gaol-delivery, &c. against the Offender, lest that afterwards when the Offender shall be brought (by the Officer) before the Justice upon his said warrant, or else happen to yield himself to the said Justice, then the party that procured the warrant be gone: for by credible report I am informed, That one having procured a warrant from a Justice of Peace in *Suff.* against another for a Robbery done upon the High-way, and the Justice upon the delivery of his warrant not having bound over the Complainant to give Evidence, nor taken his Examination, as aforesaid, that at the next Assizes and Gaol-delivery, the party charged with the Robbery came and offered himself to the said Justice of Peace, who immediately acquainted Sir Thomas Flemming (then Lord Chief Justice, and Judge of Assizes there) with the whole matter; but the said Judge much blamed the said Justice of Peace, for not having bound over the said Complainant at the first when he granted him the warrant; and charged the said Justice of Peace, at his peril, presently to send for the party Complainant to come to give Evidence, &c. and farther directed the said Justice of Peace presently to bind over the party charged with good Sureties for his attendance and appearance.



## Arrest, and Imprisonment. CHAP. CLXX. 27. 118.

§ 1.  
What.

**A**N Arrest is the Apprehending and restraining of a mans person, depriving it of his own will, and may be called the beginning of Imprisonment.

Imprisonment is where a man is arrested against his will, or is restrained of his liberty, by putting him into the Gaol, Cage or Stocks, or into some houses, or otherwise by keeping him in the High-street or open Field, so as he cannot freely go at liberty when and whither he would.

If the Constable or other Officer, (upon a warrant received from a Justice of Peace) shall come unto the party, and require or charge, or command him to go or come before the Justice, &c. this is no Arrest or Imprisonment. And upon a warrant for the Peace the Officer ought first to require the party to go before the Justice before he may arrest him. See hereof *antea*, tit. *Surety for the Peace*.

"A Bailiff or Sheriff says to a man being present, I arrest you; although he touch him not: this is a good Arrest, and if the party go away it is a Rescue. 8 Car. B. R. Sir James Wingfields case.

But this Arrest (being in Execution of the Commandment of some Court, or of some Officer of Justice) is expressed in their writs, precepts, or warrants, by these words or the like, *sc. Capias, Attachies, &c.* to attach, arrest, take, bring, or convey, or cause to be attached or arrested, &c. all which words do imply the taking or laying hold of the person.

§ 2.  
What persons.

To this Arrest all Lay persons (under the Degree of Barons or Peers of the Realm) be subject, and that by warrant from the Justices of Peace, as you may see here before, tit. *Surety for the Peace*.

But the Justices of Peace are not to grant their warrants for the Peace, or the like, against any Nobleman. And yet if a *Capias* or Attachment shall be awarded against a Baron or Peer of the Realm from the Kings Justices at *Westm.* for a Contempt, or in case of Debt or Trespals, the Officer without any offence of Law may execute the same, for that the Officer is not to dispute the Authority of the Court.

Ecclesiastical persons may also be arrested, and that by warrant from the Justices of Peace, in some cases. See hereof tit. *Surety for the Peace*. See P. Arrest 1.

A woman covert may be imprisoned by the Justice of Peace for a Force or a Riot committed by her. See *antea*, tit. *Forcible Entry, and Riots*.

But otherwise of Infants in such cases (as it seemeth.) See *ibid*.

Infant.

Yet if an Infant cannot find Sureties for the Peace, being demanded against him, he shall be committed untill he hath found Sureties. See *antea*.

An Infant (though of years of discretion, yet he) shall suffer no Imprisonment, nor other corporal pain, for any offence committed or done by him against any Statute, except that an Infant be expressed by name in the Statute. *Br. Imprif. 101. Covert 68. Plo. 364. Doct. & Stud. 147, 148.*

§ 3.  
For what cause, and by whom.

The Liberty of a Man is a thing specially favoured by the Common Law of this Land; and therefore if any the Kings Subjects shall imprison another without sufficient warrant of him, or his Law, the party grieved may have his Action, and shall recover Damages against the other; and the King also shall have a Fine of him. For Imprisonment of

of another without offence of the Law, is one of the Kings Royal Privileges, and onely annexed to the Crown.

Also by the Statute of *Magna Charta*, made 9 H. 3. c. 29. no Free-man shall be taken or imprisoned, &c. but by the lawful Judgement of his Equals; (scilicet upon his Conviction (for some offence) by the Verdict of a Jury of 12 good and lawful men) or by the Law of the Realm. See *Petition Anno 3 Caroli Regis & Stat. in 1 Ed. 3. cap. 9.* P. Accus. 1  
5 E. 3. c. 9.

And by the Statute of *Magna Charta*, every Arrest or Imprisonment, and every Oppression against the Law of the Land, is forbidden; and if any Judge, Officer, or other person against the Law, shall usurp any jurisdiction, and by colour thereof shall arrest, imprison, or oppress any man, it is punishable by the Statute. See Co. 10. 75. Co. 10. 74

This Grand Charter is a Declaration of the ancient common Law. Co. 10. 48. And the Statute of *Magna Charta*, & *Charta Foresta*, for their excellency have since been confirmed by the Authority of above 630 several Parliaments. See Co. Prefat. to the 8 Report.

§ 4. Note, that all Jurisdiction ought to be either by Charter or Prescription. Co. 11. 99. Jurisdiction.

Also by the Statutes of 25 E. 3. c. 4. 28 E. 3. c. 3. & 42 E. 3. c. 3. no person shall be taken or imprisoned, nor put to answer, unless it be by Indictment or Presentment (of a Jury) before Justices, or by matter of Record, or by due Process made by writ original at the Common Law. See P. Accusation 1. & 42 Aff. 15. And Br. Faux Imprif. 30. 2 H. 4. the Body of a man shall not be taken but by Process out of a Court of Record.

A Commission to arrest or take a man (and his goods) was holden to be against Law, for that this ought to be either upon Indictment, or suit of the party, or other due Process of Law. Br. 15. 16. & Faux Imprif. 9. & Indictment 38. 42 Aff. 5. 12. 24 E. 3. 9. Co. 5. 64. Et les Commissionnes de Oyer and Terminer poent prendre tiel Commission del party, & rem. ceo al Councel le Roy, car est encontre Ley

And so note, that no man shall be arrested for Debt, Detinue, Trespass, or other cause of Action, but only by virtue of a Precept or Commandment out of some Court of Record.

Neither shall any man commit another to prison, except he be Judge of Record. Co 10. 103.

But yet for misdemeanors done against the Kings Peace, (as for Treason, Felony, or breaking of the Peace, &c.) the Offenders as well by the Common Law, as by divers Statutes, may be arrested and imprisoned by the Officers of Justice, and sometimes by private persons, (as hereunder followeth) without either Presentment, Process, Precept, Warrant, or other Commandment. And these being by the Law of the Realm, are warranted by the aforesaid Stat. of *Magna Charta*. See Co. 3. 11. 2.

§ 5. And M. Bracton (l. 5. in fine) saith thus; *In criminalibus causis, ubi sequi debet capitale iudicium, vita viz. vel mutilatio membrorum, non sequitur Attachiamentum aliquod, sed corpus tale (quicumque fuerit ille) ab omnibus arrestetur qui sunt ad fidem Domini Regis, sive inde Præceptum habuerint, sive non habuerint.* By a private man.

And yet you must observe, that for arresting of the body of a man in such cases there must be some just cause, or some lawful and just suspicion at the least. And therefore where a man is indicted of Felony, that is a good cause for any man to arrest him. But if an Appeal of Felony be commenced against another, that is no sufficient cause, for it is but a private suspicion, &c.

Also

Also every private man may arrest another, whom he knoweth or seeth to have committed a Robbery, Manslaughter, or other Felony, and may deliver him to the Constable of the Town where such an Offender is apprehended, or in the Constables absence may imprison and set him in the Stocks; and if there be no Stocks there, in so much he may carry the Offender to the next Town, and deliver him to the Constable there. See 9 E. 4. 28. or else he may carry him before a Justice of Peace, by him to be examined and sent to the Gaol, there to abide untill the next Assizes, or Sessions of the Peace, &c. 10 E. 4. 17  
Fitz. Bar.  
101.

Also when a Felony is committed, every man may arrest suspicious persons that be of evil fame, &c. and if such person shall make resistance, the other may justifie to beat him.

But for the arresting of such suspicious persons, note, that there must be some Felony committed indeed.

Also the party that shall arrest such suspected person must have a suspicion of him himself, and for the same Felony; or otherwise suspicion generally is no cause to arrest another. See *antea*, tit. *Examination*, 5 H. 7. 4. & *Lib. Intr. tit. Fx. Impr. div. 5.* 9 E. 4. 21.

So that when any Felony is done, every man that shall suspect another to be guilty thereof may arrest him, See 5 H. 7. 4. b. *Br. Faux impris.* 16.

§ 6. *Cause.* Any man suspecting another of a Felony committed, or only intended, may arrest him, so as thereupon he commits him to the Gaol, or carries him before a Justice of Peace. 9 E. 4. 26. 20 E. 4. 6. *Vide Finch* 127.

Also when a Felony is committed, the common voice and fame that *I. S.* did the Felony, is sufficient cause for any man to suspect him, and to arrest him. *Ibid.*

Also Hue and Cry after *I. S.* for Felony seemeth to be sufficient cause to arrest him, though there be no Felony committed. *Ibid.*

Also Hue and Cry is sufficient cause to arrest any suspicious person. *Br. Fx. Impr. 25.*

So when a Felony is done, to be in company of the Offenders is sufficient cause to arrest him.

So to live idely and vagrant. *Br. Fx. Impr. 22.* See *antea*.

Also every man may arrest such as apparently go about to commit any Felony, and may imprison them. *Finch* 127. 9 E. 4. 28.  
Nedham.  
29 E. 3. 39  
5 H. 7. 4.

Also upon Hue and Cry for stolen Goods, (*sc.* for a Horse or Bullocks, &c. of such colour, &c.) if *A.* be taken driving or leading, &c. such a Horse, or such a Bullock, or having such other stolen Goods about him, though he be a man of good Name and Credit, yet every man may apprehend and stay *A.* hereupon, and may deliver him to the Constables, by them to be set in the Stocks, or safely kept, untill they can carry him before a Justice of Peace, that so he may be delivered by course of Law. 10 H. 7. 28

If any man shall be dangerously hurt in Affray, (or otherwise) every man may arrest and imprison the Offender, &c. What every private man may further do in Affray, see before tit. *Affray*.

§ 7. *Justifica-  
tion.* Unlawful Hunters in Parks, the Keepers, or their Servants, may for such Offence justifie to arrest the Offenders, and to cause them to depart, &c. *Lib. Intr. tit. Fx. Impr. div. 12.*

Every man knowing of any that keepeth or useth any Gun, &c. contrary to the Statute, may arrest him, and bring him to the next Justice of Peace, &c. See *antea*, tit. *Guns*.

Night.



Co. 9. 63. b Night-walkers, being strangers or suspected persons, Watchmen may arrest them, and may stay them till the morning, &c. See hereof *tit. Watch, antea*. Yea, every man may arrest such Night-walkers, for it is for the good of the Kingdom. 4 H. 7. 18. Br. Ex. Impr. 15. See the Statute of *Winch.* 13 E. 1. & 4 H. 7. f. 2. & 5 H. 7. f. 5. a.

But in all these cases before, where a private man shall arrest another, he ought thereupon to commit the Prisoner to the Gaol, or to carry and deliver him to the Constable, or to some other Officer, &c. See 20 E. 4. 6. Finch 127.

The Sheriff, Bayliff, Constables, and other the Kings Officers may arrest and imprison Offenders in all cases where a private person may, and without any Writ or Warrant.

Where a Constable may arrest one, &c. See hereof *antea, tit. Conservators of the Peace, Affray, Forcible Entry, and Examination*.

A Constable being informed of a lewd Man and Woman that are together in Incontinency, may take with him so many of his Neighbours as he will to arrest the said Man and Woman, to find Sureties for their Good Behaviour. 1 H. 7. 7. 13 H. 7. 10.

If a man makes an Assault upon the Constable, he may justifie to arrest him that makes the Assault, and to carry him to the Gaol for the breach of the Peace, although the Constable be the party upon whom the Assault was made; 5 H. 7. 6. Br. ex. imp. 41.

The Justice of Peace may arrest and imprison Offenders in all cases where a private man may. See *hic antea*.

The Justice of Peace (upon his own motion and discretion, or upon complaint) may also grant out his Warrant for the arresting (or conveying before him) of all such persons as shall break, or go about to break the Peace, or as he shall suspect to be inclin'd to break the Peace, and may commit them to prison, if they shall refuse to find, or cannot find Sureties for to keep the Peace.

The Justice of Peace (in divers cases) may in like sort grant out his warrant for the Good Behaviour against Offenders, (as you may see before) and may commit them to prison for not finding Sureties accordingly.

And these things the Justice of Peace may do by force of the Commission, and of the Statutes 18 E. 3. c. 2. & 34 E. 3. c. 1.

If one cometh before the Justice of Peace upon his warrant for the Peace, Good Behaviour, or for a Riot, or the like, the Justice needeth not to demand Sureties of him, but may commit him if he do not offer it. Br. Peace 7.

Also the Justices of Peace upon their own view, &c. of the Offence, may imprison the Offender against divers Penal Laws; as namely such as keep common Ale-houses without Licence, offenders for unlawful Games, Rioters, such as shall make any Forcible Entries or Holdings of Possessions, &c. See for these before under their particular Titles. § 18.

There be divers other offences which by the Statute are committed to the Justices of Peace (out of their Sessions) to hear and determine, and of which the Offenders shall be convicted, sometimes upon their own Confession before the Justices, and sometimes upon examination and proof of witnesses; in all which cases the said Justices of Peace may convene the said Offenders before them (by their Process or Warrant,) and after such examination and conviction, they may imprison or otherwise punish the Offenders, according as they are limited by the said Statutes. See before.

Where-

Wheresoever the Justice of Peace hath power or authority given him by any Statute to bind over any man, or cause a man to do any thing, if such person (being in his presence) shall refuse to be bound, or to do such thing, it seemeth such Justice may send such person to the Gaol, there to remain till he shall perform the same. See hereof *antea*, tit. *Recognitione*.

In what cases the Kings Officer may break open a mans house for to arrest an Offender; see hereof, tit. *Forcible Entry*.

All men being required ought to assist the Kings Officers, to pursue and arrest Offenders against the Peace, &c.

§ 8. *Resist.* If the party against whom any lawful warrant is granted shall make resistance, or shall make an assault upon the Officer, or shall fly; the Officer may justify the beating and hurting of him, and may also imprison him in the Stocks for the same: But if the party resisteth or flieth before he be arrested, the Officer cannot justify the beating of him. 2 E. 4. 6. 21 Pl. 7. 37.

2 Ed. 4. 7. 4. Br. *Tresp.* 296.

If the Warrant were to arrest or take one than standeth indicted of Felony, then may the Officer justify the killing of such a person, if he shall resist or fly, or that he cannot otherwise be taken. See *hic antea*, *Homicide tolerated*.

§ 9. *Gaols. Imprisonment. The place.* None shall be imprisoned by any Justice of Peace, but onely in the common Gaol, by the Statute of 5 H. 4. & 23 H. 8. cap. 2. 5 H. 4. 101 P. Prison.

And therefore Justices of Peace cannot commit Felons to any of the Counters in London, nor to other Prisons which be no common Gaols; nor make a Gaol of their own houses. 1 Co. 6. 119 b.

And yet Justices of Peace may commit to the Stocks some Offenders against certain penal Statutes; as Towns-men Tippling in Alehouses, &c. See hereof *antea*, tit. *Ale-houses*.

Persons refusing to work in Hay and Harvest-time. See *antea*, tit. *Labourers*.

And in some cases the Justice may commit an Offender to safe custody by his discretion. *Vide antea*, tit. *Preachers*.

Also in some cases the Justices may send Offenders to the House of Correction, there to be continued for any reasonable time, at the discretion of the Justice. See *antea*, tit. *Rogues*.

The Sheriff or Gaoler may imprison a Felon or other Prisoner in their own house, or in the common Gaol, at their pleasure. *Tamen quare*, & vide *Cromp.* 184. that the Gaol is the Kings Prison, and that for causes touching the King Offenders shall be sent thither. Lam. 136. Crom. 169.

The Constable (or other such Officer) cannot imprison any man in his house (as it seemeth) but in the Stocks; and that not above such a reasonable time, as he may provide convenient aid safely to convey the Prisoner to the Justice or Gaol. *Finch*. 20 E. 4. 6. 22 E. 4. 35 3 H. 4. 9.

And yet in case of an Affray, &c. the Constable may for a time imprison the Offender, being a man of quality, in the Constables own house, or may commit him to some other safe custody. *Vide hic* cap. 1.

§ 10. *County.* If a man commit Felony in one County, and be arrested for the same in another County, he shall be imprisoned in that County where he is taken. *Vide antea*, tit. *Felony*, & 11 E. 4. Br. *faux impr.* 25.

The Justice of Peace, Constable, or other Officer, pursuing a Felon into another County, takes him there; the Felon shall be committed to the Gaol of the County where he was taken: for the Justice of Peace or Officer, being out of his County, hath no more Authority then 13 E. 4. 9.

a private man. *Vide antea, tit. Accessaries & Felony. Br. Fresh suit 3. & Flo. 37. 4.*

Also if the Constable (or other Officer) shall see an Affray, and he coming to arrest them, the Affrayers do fly into another County, the Officer (as every other private person) may pursue them into the other County, and may stay or arrest them there; but the Officer cannot bring them out of that County, but must carry the Affrayers before some Justice of Peace of the same County where they were taken, &c. But if the Affray be in one Town, and the Affrayers do fly into another Town, or into a Franchise or Liberty within the same County, the Officer may pursue them, and take them out of the Franchise, &c. by Fresh suit. *Vide antea, tit. Affray.*

See 2 E. 4.  
6.  
Br. Tresp.  
296.

But if the Constable hath arrested one, upon a Warrant from a Justice of Peace, and after the Arrest the party escapeth (of his own wrong,) and flyeth into another County, the Constable may pursue and take him in the other County by Fresh suit, and bring him before the Justice of Peace upon whose Warrant he was first arrested, as it seemeth. See *Crom. 172, 173. & antea, tit. Felony by Statute.*

If a Prisoner taken in Execution shall make an Escape of his own wrong, and shall fly out of sight, and into another County, where the Sheriff hath no power, yet the Sheriff, &c. upon Fresh suit, may take him again in any other County, and he shall be still said to be in Execution; yea, without fresh suit, the Sheriff, &c. may take him again, and keep him until he hath agreed with him: otherwise, if the Escape were by the consent of the Sheriff, &c. *Co. 3. 52. Br. Escape 4. 12.*

3 Jac. 10.  
2. Pril. 7. 8

Now for the conveying of Prisoners to the Gaol, it must be at the proper charge of the Prisoners, if they have means or ability thereto; otherwise it must be at the charge of the Town where they are taken. *21 Fac. 6. 28. & 3 Caroli 4. confirmed.*

§ 11.  
Charges.

And if the Prisoner shall refuse to bear the charge, the Justice, by his Warrant under his hand and seal, may cause the High-Constable of the Hundred, or pety-Constable of the Town, where he hath any Goods, to sell so much thereof as will satisfy the charges; and if the Prisoner have no Goods known, then the Parishioners of the Town, where he was apprehended, refusing to pay their Rate towards that charge, may by like Warrant be distrained to pay the same. *Vide Stat. 3 Fac. cap. 10.*

10 H. 4. 7.  
E. Ec. 8.

And if a man be arrested for Felony, and the Constable shall carry him to the Gaol, and the Gaoler will not receive him, the Constable must bring him back to the Town where he was taken, and that Town shall be charged with the keeping of him until the next Gaol-delivery, by the Opinion of the Book 16. H. 4. or the Constable or other party that arrested him may in such a case keep the Prisoner in his own house, as it seemeth. See 1 E. 4. *Br. Faux Imprisi. 25. fine.*

P. Pril. 6.  
2. Jac. 10

But the Gaoler denying to receive a Felon by the delivery of any Constable or Township, or taking any thing for receiving such, shall be punished for the same by the Justices of Gaol-delivery.

Co. 8. 119  
Pr. 17. b.

When a Statute doth appoint Imprisonment, but limits no time when the Offender shall be imprisoned, then he is to be imprisoned presently, as in case of a force, the Justices of Peace, upon view thereof, ought to commit the Offenders presently, for after they may not commit them.

§ 12.  
The time,

Also



Also when a Statute doth appoint Imprisonment, but limits no time how long, where the Prisoner must remain at the discretion of the Court. *Crompt. 171.*

Where a Statute doth ordain that an Offender shall be imprisoned at the Kings pleasure. *Vide antea, tit. Bailment.*

Where a Statute ordaineth that a Prisoner shall not be delivered without the Kings special commandment, and that upon a Fine to be made to the King; who may assess the same Fine, and deliver him. See 18 H. 3.

But Imprisonment to be inflicted by the Justice of Peace, almost in all cases, (except for the Peace, the Good behaviour, or for Felony, or higher Offences) is but to retain the party untill he hath made Fine to the King for Contempt or Offence; and therefore if he shall offer to pay his Fine, or shall find Sureties by Recognizance to pay it, he ought to be delivered presently. *2 Mar. 1.*

§ 13.  
The man-  
ner.

Now for the manner of Imprisonment, it seemeth generally in all cases where a man is committed to Prison, especially if it be for Felony, or upon an Execution, (or but for a Trespass, or other Offence) every Gaoler ought to keep such his Prisoner *in salva & arcta custodia*; *Salva*, sc. that he ought to be imprisoned so surely as that he cannot escape; *Arcta*, in respect that he ought to be kept close, without conference with others, or intelligence of things abroad.

And therefore if the Gaoler shall license his Prisoner to go abroad for a time, and then to come again, or to go abroad with a Keeper, though he come again, yet these are Escapes: and if the Prisoner were in for Felony, this is finable in the Gaoler at least, if it be not Felony; and if the Prisoner were in upon an Execution, this is so penal to the Officer, as that he shall be charged for the Debt; and if the Prisoner were in but for a Trespass, yet the Officer is finable: for Imprisonment was ordained for punishment of Offenders, and in terror of all others; *ut parricidii paucos, metus ad omnes perveniat. Vide antea, tit. Felony by Statute.*

And yet see *Co. 2. 260.* That Imprisonment must be, *Custodia*, & non *punitio*; for *Carpere ad homines custodiendos, non ad puniendos, dari debet*: But yet it seemeth meet and just that it should be *punitio*, as well as *custodia*; sc. for Malefactors, that it should be a punishment to them, and a terror to others, and for Debtors, that they may the sooner pay, or take order with their Creditors.

For, as one saith, *Maxima illecebra peccandi impunitatis spes*. A great impulsive cause of offence is the hope to escape unpunished: And so a great cause that Debtors care not to pay, nor to take order with their Creditors; is their hope to escape Imprisonment, or of too much favour and liberty in Prison.

Also (by the Law) those which are in Execution ought not to go at liberty within the Prison, nor abroad with their keeper, 24 H. 8; much less in cases of Felony, or of higher Offences.

Also by the Statute of *Westm. 2. c. 11.* Accomptants, and such as are in Execution, the Sheriff or Gaoler may put Irons or Fetters upon them; and yet if the Gaoler shall imprison a man so streightly, by putting him in the Stocks, or putting more Irons upon him then is needful, or keepeth him without victual from him, whereby the Prisoner becometh decrepid, lame, or otherwise diseased, he shall have an Action of the Case against the Gaoler; and if the Gaoler shall keep his Prisoner more streight then of right he ought to do, so that the Prisoner dieth thereof, this is Felony in the Gaoler. *Hic verbo Gaoler.*

Br. Impr.  
100. Co.  
11. 43.

Co. 3. 100  
& 6. 87.

Co. 3. 44

1 R. 2. 611  
7 H. 4. 64

Dyer 249  
Co. 3. 44

Co. libid. 1  
P. Acco. 2.  
Fitz. 93. b.  
11. 2. 60

Also the Constable or other such Officer, that shall imprison in the Stocks any Offendor for Felony or suspicion thereof, may lock the Stocks, and, if need be, may also put Irons on him, as it seemeth; and when he conveyeth him to the Gaol, or to the Justice, may pinion him, or otherwise make him sure, so that he cannot escape.

Kit. 69.

It seemeth by *Britton*, fol. 17. that by the Common Law (before the Statute of *Westm. 2.*) none should have Irons put on them but such Offenders as were taken for Felony, or Trespassers in Parks. But the words of the Statute of *Westm. 2. cap. 11.* are general, *quod carceri mancipentur in ferris*; which word *Carceri* seemeth to signifie any persons imprisoned for any cause, (or any persons worthy of the Prison) and is not to be restrained to Accomptants onely. See *Cok. 3. 44.*

7 Jac. 4.

Also by the Statute 7 *Jacobi Regis*, all Rogues, Vagabonds, iturdy Beggars, and other idle and disorderly persons, sent to the House of Correction, may (by the Master of such a House) be punished by putting Fetters or Gyves upon them.

*Posse Comitatus.* CHAP. CLXXI. V. 119.

Lamb. 38.

**V**Here the Justice of Peace, Sheriff, or other Officer, is enabled to take the power of the County, it seemeth they may command, and ought to have the aid and attendance of all Knights, Gentlemen, Yeomen, Husbandmen, Labourers, Tradesmen, Servants and Apprentices, and of all other persons being about the age of fifteen years, and able to travel. § 1.

But Women, Ecclesiastical persons, and such as be decrepit or diseased of any continual infirmity, shall not be compelled to attend them.

And in such cases it is referred to the discretion of the Justice of Peace (or Sheriff, &c.) what number they will have to attend upon them, and how and after what manner they shall be armed, weaponed, or otherwise furnished.

But it is not justifiable for the Justice of Peace, Sheriff, or other Officer, to assemble *Posse Comitatus*, or raise a Power or Assembly of people (upon their own heads) without just cause. *Vide antea, tit. Riots.*

*What Persons may take Posse Comitatus, and in what Cases.*

CHAP. CLXXII. V. 120.

And, part 2. p. 67.

**A**NY Justice of Peace, or Sheriff, may take (of that County where he is a Justice, or Sheriff,) any number that he shall think meet to pursue, apprehend, arrest and imprison Traitors, Murtherers, Robbers, and other Felons; or such as do break, or go about to break, or disturb the Kings Peace: and every man (being required) ought to assist and aid them. *Vide antea, tit. Forcible Entry, and Felony.* § 1.

The Justice of Peace (and Sheriff or Under-Sheriff) may take *Posse Comitatus* for the suppressing of Riots; and all sorts of persons (being able and required) ought to assist them therein. *Vide antea, tit. Riots.*

14 H. 7. 8.

Yea, any one Justice of Peace may take the Power and Aid of the County to suppress Rioters, and needs not to tarry for the coming of another Justice, or of the Sheriff.

Also, in cases of Forcible Entry, any Justice of Peace may take *Posse Comitatus* to remove such persons as by his view, or by Inquisition taken

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be.

§ 2. In what cases.

before him, shall be found to have made any Forcible Entry (into other mens Possessions,) or to detain them with force. *Vide antea, tit. Forcible Entry.*

Also the Sheriff, or other Officer, upon any lawful Warrant for the apprehending of any Popish Recufants, &c. may take *Posse Comitatus*, &c. P. Rec. 52.

See the Statute 3 Jac. 4.

The Sheriff, Under-Sheriff, or Bailiff, &c. (if need be) may by the Common Law take the Power of the County (what number they shall think good) to execute the Kings Process or Writ, be it a Writ of Execution, *Replevin*, *Estrepment*, *Capias*, or other Writ, it being the Kings Commandment. See also the Statute *Westm. 1. 37. Westminster.* 3 H. 7. 1.  
10.  
Co. 5. 115  
P. Distr. 4  
P. Rector. 5  
Br. Fin. 2  
37.  
Br. Riots  
2, 3.

And such as shall not assist them therein (being required) shall pay a Fine to the King. See *hic antea.*

The Sheriffs Bailiff, to execute a Replevy, took with him three hundred men armed (*modo guerrino, &c.*) with Brigandines, Jacks, and Guns, and it was holden lawful: for the Sheriffs Officer hath power to take Assistance as well as the Sheriff himself, for that is all one Office, and one Authority. 3 H. 7. 1.  
Br. Tresp.  
266. &  
Riots 2.

A man demands the Peace in the Chancery against a great Lord, and hath *Supplicavit* directed to the Sheriff: there, if need shall be, the Sheriff may take *Posse Comitatus* to aid him to arrest such a Lord, &c. *Vide antea, tit. Surety for the Peace.*

So it seemeth, if a *Supplicavit* be directed to a Justice of Peace, the Justice of Peace, or Officer to whom the Justice of Peace shall make his Warrant in this behalf, (upon resistance made) may (if need be) take *Posse Comitatus* to aid him to arrest the party: *Quia quando aliquid mandatur, mandatur & omne per quod pervenitur ad illud. Co. 5. 115.*

But every Sheriff is inabled besides by his Writ of Assistance, whereby there is commandment (under the Great Seal) to all Archbishops, Dukes, Earles, Barons, and all other the Kings Subjects within the same County, to be aiding to him in whatsoever belongeth to his Office, &c.

The Sheriff may take *Posse Comitatus* to apprehend Felons, &c. or disturbers of the Peace. *Vide antea tit. Forcible Entry.*

So he may take *Posse Comitatus* to execute the Precept of the Justice of Peace. *Ibid.*

The Constable (of a Town) upon a Felony committed, or upon any Affray, or the like, may take the aid of his Neighbours, or other persons being present, to apprehend the Felons, or to cause the Peace to be kept, and to carry the Offenders before the Justice, &c. See *Br. Riot 3.* 5 H. 7. 10.  
13 H. 7. 10  
Br. Tresp.  
432.

One hath hurt another, whereby he is in peril of death, the Constable may take power or aid to arrest him, &c.

So may the Constable take the aid of his Neighbours for executing of the Justices warrant directed to him.

Yea all and every such persons as are Conservators of the Peace by the Common Law, (*sc.* every petty Constable, High Constable, Coroner, Sheriff, Steward of a Leet, or of a Court of Pipowders, Steward of the Sheriffs Torn, and othe Judge in any Court of Record) may command and take the meet help, aid, and force of others, to pacifie and to arrest all such who in their presence, and within their Jurisdiction, shall go about to break the Peace by deed or word. 23 E. 3. 8.

Every



Co. 11. 82  
21 H. 7. 39

Every man may assemble his Friends and Neighbours to defend his person; &c. (being in his house) against violence, &c. but not to go abroad with him to a Fair or Market, &c. *Vide antea, tit. Forcible Entry.*

*Certain Advices to the Justices of Peace.* CHAP. CLXXIII. V. 110.

"THIS being such a Form of Subordinate Government for the tranquillity and quiet of the Realm, as no part of the Christian world hath the like, as saith my Lord Coke, 4 Inst. 170. if the same be duly executed, much of the happiness and tranquillity of this Nation depends on our Justices of the Peace well and faithful discharge of their duty, and their due or ill Administration of the Authority given them, must needs add to the Reputation of our Government, or the Defamation thereof, especially since their Authority is so much enlarged by several Statutes: it will concern them therefore for their direction and security, to peruse the Statute of 4 H. 7. 12. where they may find their Duty to give just relief, and the danger of neglect. And therefore I thought it not amiss here shortly to admonish the Justices of Peace again of some few things mentioned before, for their better memory.

1. First, That they exercise not the Office of a Justice of Peace before they have taken the Oath of their Office, and the Oath of Supremacie. *Vide antea, cap. 4.*

Crom. f.  
68.  
Lit. 212.  
Col. 141.

2. That they execute not this their Office in their own case, but cause the Offenders to be convened or carried before some other Justice, or desire the aid of some other Justice being present; *quia iniquum est aliquem sua rei esse judicem.* Cok. 8. 118. And some late Statutes have taken special care to prevent this, as you may see *hic tit. Trespass, &c.*

9 H. 6. 21.  
11 H. 6. 49

Besides; *idem non potest esse agens & pasciens.* 14 H. 8. 13. And when a man is a party, he cannot be a Judge indifferent. 8 H. 6. 19. *Auxy ad estre sovent view, que Justice de Peate que ad execute ceo Office en son Case demesne, ad estre puny pur ceo in Camera stellata.* Cromp. 68.

3. That they be careful for the Execution of the Statute of Riots. *Vide ante, tit. Riots.*

Moors  
Rep. p.  
628.

"And that neither in the case of Riots, or any part of their Office besides, they meddle (if they can avoid it) where any Relation is concerned, for it brings a Suspicion upon their Proceedings; but if they must needs meddle (as it is not always in their choice, that they carry themselves uprightly herein: For one Carew (a Justice of Peace of Devon) was censured, he going to view a Riot, and the Rioters being escaped before his coming, he refused to go to the place where they were, although but a little way off; and the Peace being required against them, he took Recognizances to keep the Peace against others that demanded it not, and granted *Supersedeas*, and procured the Peace to be released the next day. And all this in favour of his Brother.

If upon their inquiry of a Riot the truth cannot be found, by reason of any maintenance, &c. that they certify the same within one moneth. *Ibid.*

4. That upon Forcible Entry they make no Restitution without Enquiry. *Vide antea, tit. Forcible Entry.*

Ddd ;

5. That

5. That upon notice of any Treason, or of any Seminaries, &c. or of any *Agnus Dei*, &c. offered, they discover the same to some of the Privy Council. *Vide tit. Treason.*

6. That they be circumspect in bailing of Prisoners, *viz.* that they neither deny it to such as areailable, nor yield it where it is not grantable. *Vide hic Bailment.*

7. If any Felony be committed, and one is brought before the Justice of Peace upon suspicion for the same, though it shall appear to the Justice that the Prisoner is not guilty of that Offence, or that it is not Felony of Death, yet he may not set him at liberty, but so as he may come to his Trial. *Vide antea, tit. Felony by Statute, and Evidence against Felons.*

8. That all Recognizances taken by them be in the Kings name.

9. That all Recognizances taken by them be certified at their next Quarter Sessions, or Gaol-delivery, according as the case shall require.

10. That they meet at every Easter Sessions at the least. *Vide 5 El. c. 4. P. Just. 67.* And yet their presence and attendance at every general Sessions is very requisite.

11. That their Examinations taken concerning the mis-entring of Plaints in County-Courts, or the defaults of gathering the Shire-Amerciaments, be certified into the Exchequer, &c. *Vide antea, tit. Sheriffs.*

12. That such offences as the Surveyors of High-ways shall present to them, they again present at their next Quarter Sessions. *Vide antea, tit. High-ways.*

13. That the Oaths taken by them upon the submission of any Recusant be certified at their next Quarter Sessions. *Vide antea, tit. Recusants.*

14. Also that they do justice, and give remedy to every party grieved, in any thing that lieth within their power to hear, determine, or execute, and that without respect of persons, and according to the Laws and Statutes of this Realm. *Vide antea cap. 4.*

15. He must suffer the Law to have its course, and not privately stay Proceedings, contrary to the Duty of his Place. *Latch 48.*

16. Where they have Jurisdiction by any Statute which at first was Temporary, they are to consider whether the same be continued or made perpetual, and so be not expired.

Note, that all these former matters are penal to the Justices of Peace if they shall offend in any of them, and therefore it is likely they will be the more careful therein. But there are certain other things principally tending to the publick good, and lately commenced from his Majesty (by the Judges of Assize) to the care of the Justices of Peace, in all which the Justices of Peace are to imploy also their special care and diligence: and they are shortly these ten Articles following.

1. Alehouses; The abuses there to be reformed, and such as be unlicensed to be suppressed.

2. High-ways and Bridges to be amended.

3. Hue and Cry and Fresh sute to be duly made and pursued after Robbers and other Felons.

4. Labourers, &c. idle persons meet to serve, to be compelled to go to Service.

5. Poor, their Children to be placed Apprentices, such as are able of Body, to be holden or set to work.

6. Re-

6. Recusants. First, Popish Recusants, (especially such as have been reconciled to the Pope, or drawn to the Popish Religion since the Gunpowder Treason, for these are by His Majesty accounted most dangerous) that these be certified into the Kings Bench, and farther to be dealt withall (by the Justices of Peace) according to the several Statutes in that behalf made.

Also negligent Recusants, which shall not resort every Sunday to Church, that such be punished according to the Statute. For the first and best means to bring men to God is to bring them to Church.

7. Rogues and Vagabonds are to be duly punished.

8. Houses of Correction to be maintained.

9. Watch to be duly kept.

10. Weights and Measures, the Abuses therein to be reformed.

Farther, the Justices of Peace are to be careful that they suffer not the King to be disadvantaged, where it lieth lawfully in their power to prevent it. *Vide Lamb. 521.*

Also that they remember, how that they exercise not the Judgments of Men onely, but of God himself, (whose power they do participate; and who is always present with them) and therefore must take heed that in all their actions they set God continually before their eyes.

But forasmuch as most of the business of the Justices of Peace (out of Sessions) consisteth in the Execution of divers Statutes committed to their charge, which Statutes cannot be sufficiently abridged, but that they will come short of the substance and body thereof; therefore it shall be safest for the Justice of Peace not to rely over much upon these short Collections thereof, but to have an eye to the Abridgment of Statutes, or rather to the Book of Statutes at large, and thereby to take their farther and better Directions for their whole Proceedings: For (as Sir *Ed. Coke* observeth) Abridgments are of good and necessary use to serve as Tables, but not to ground any Opinion, much less to proceed judicially upon them. *Ideo* (saith he) *tutius est petere fontes quam sectari rivulos.* *Coke* 10. 117. b.

And lastly, for the better encouragement of Justices of Peace, Constables, and other Officers, (and of all others which in their aid, or assistance, or by their Commandment, shall do any thing touching his or their Office) who (by causeless Suits commenced by contentious persons against them for executing their Offices) have lately been discouraged from doing their Offices (with that courage, care and diligence which is required at their hands) now for their ease in Pleading, they are by the Statute 7 & 21 *Jacobi* allowed to plead the general issue of Not guilty, and give the special matter in Evidence, and for their wrongful vexation double Costs. And for all Actions, &c. to be brought against any Justice of Peace or other Officer, (or other person which in their aid, &c. shall do any thing concerning their Office) the said Action, &c. shall be laid within the County where the Fact shall be done, and not elsewhere, &c. 21 *Jac. Reg. cap. 12.*

*Et nota, quicquid Justic. fecerit de Recordo ignoranter, & pro defectu scientia, non erit pro eo puniendus: Nec pro re per ipsum facta judicialiter.* 2 R. 3. fol. 10. *Mes les Justices d'Assise poient oyer & punier les defaults de Justices de Peace, sc. leur contempts, omissions, negligences, favours, affecti- ons, corruptions, & autres defaults quacunque.*



## Warrants, and Precedents. CHAP. CLXXIV. V. 121.

§ 1. **T**He warrants of the Justice of Peace may be styled and made after divers manners. As

1. First, in the name of the King; and yet the *Tesse* may be under the name of the Justice (or Justices) of Peace, that grant them out.

2. Or they may be styled and made only in the names of the Justices.

3. Or they may be made without any such style, and only under the *Tesse* of the Justice of Peace, or only subscribed by the Justice, as followeth,

*In the Kings Majesties Name.*

*Cambr.* **C**HARLES, by the grace of God, King, &c. To our Sheriff of *The Style*  
 our County of *Cambridge*, the High Constables of the Hundred of  
*Radfield*, the pety Constables of the Town of *Balsbam*, and to all and singular our Bailiffs and other Ministers in the said County, as well within Liberties as without, Greeting. Forasmuch as *A. B.* of, &c. hath come before Sir *Edward Peyton*, Knight and Baronet, one of our Justices of Peace within the said County, and hath, &c. (concluding it in the Justices name, as thus) Witness the said *Edward Peyton*, at *Isleham*, the *The Tessa*  
 day of &c.

\*2 § *Direction.* Note, that wheresoever the warrant is made in the Kings name, (as before) there it seemeth the warrant ought to be directed to all Ministers as well within Liberties as without, for that the King is made a party: and so it may be done in all other warrants, (especially for Felony, or for the Peace, or the Good behaviour, &c.) because it is the service of the King; and no Liberty or Franchise shall be allowed, or hold place against the King. *Br. Franch.* 31. Yet see before, that the Justices of Peace of the County may not intermeddle in any City, Town, or Liberty, which have their proper Justices. *Hic cap.* 6.

*Or thus, in the name of the Justice himself.*

*Cambr.* **M**iles Sandys, Knight and Baronet, one of the Justices of the Peace of our Sovereign Lord the King within the said County, To the Sheriff of the said County, to the Bailiff or Constables of the Hundred of, &c. to the pety Constables of the Town of *P.* within the said Hundred, and to all other the faithful Ministers and Officers, of our Sovereign Lord within the said County, and to every of them, Greeting. Forasmuch as, &c. Given under my Hand and Seal, at the day of &c.

Or they may be directed to any of these Officers (above named) particularly, or else to any other indifferent person, or persons, as followeth.

**C**hristopherus Hatton, Miles & Baronettus, unus Custodum Pacis Dom. Regis in Com. Cantabr', Vice ejusdem salutem: vel Ballivo itineranti ejusdem Com. salutem: vel Ballivo Hundred' de R. & Ch. in Com. prad salutem: vel B. C. & D. E. Constabul' Hundred' de W. salutem: vel Constab. (generally) Hundred. or Villa de H. salutem: vel F. G. & H. I. Constabul. Villa de H. & eorum cuilibet, salutem: vel sic, Dilectis sibi K. L. & M. N. & eorum cuilibet, conjunctim & divisim, salutem. &c.

*A Warrant for the Peace.*

**C**HARLES, by the grace of God, &c. To our Sheriff, &c. Forasmuch as *A. B.* of, &c. Yeoman hath personally come before Sir *Fohn Carleton* Baronet, one of our Justices of the Peace within the said County, and hath taken a corporal Oath, that he is afraid that one *C. D.* of *F.* in the said County, Yeoman, will \* beat (wound, maim, or kill him, or burn his Houses;) and hath therewithall prayed Surety of the Peace against the said *C. D.*: therefore We command and charge you joyntly and severally, that (immediately upon the receipt hereof) you cause the said *C. D.* to come before the said Sir *Fohn Carleton*, or some other of our Justices of the same County, to find sufficient Surety and Main-prise, as well for his appearance at the next Quarter Sessions of our Peace to be holden at the Castle of *Cambridge*, or elsewhere, for or in the said County, as also for our Peace to be kept towards us and all our liege people, and chiefly towards the said *A. B.*, that is to say, that he the said *C. D.* shall not do, nor by any means procure or cause to be done, any of the said evils to any of the said people, and especially to the said *A. B.* And if the said *C. D.* shall refuse thus to doe, that then immediately (without expecting of any farther Warrant) you him safely convey. or cause him to be coveyed safely, to our next Prison in the said County, there to remain until he shall willingly doe the same: (so that he may be before our said Justices, at the said next general Sessions of the Peace to be holden at *Cambridge* aforesaid, then and there to answer unto us for his contempt in this behalf.) And see that you certifie your doings in the Premisses to our said Justices at the said Sessions, bringing then thither this Precept with you. Witness the said *Fohn Carleton*, at *S* aforesaid, the fourth day of *August*, &c.

*Or thus, in the name of the Justice himself, mutatis mutandis.*

For the  
Peace,

**T**homas *Fermy* Knight, one of the Justices of the Peace of our Sovereign Lord the King within the said County, to the Sheriff, &c. Greeting. Forasmuch as *A. B.*, &c. hath personally come before me, and hath taken a corporal Oath, &c. *ut supra*. These shall be therefore on the behalf and in the name of our said Sovereign Lord, to command you joyntly, &c. that you cause the said *C.* to come before me, or some other of his Majesties said Justices of Peace in the said County, &c. *ut supra*. Given under my Seal at aforesaid &c.

Or thus.

*"Quia A.B. coram me sacramentum prestitit corporale, quod ipse sibi metuit dampnum de corpore suo per J.S. de facili posse venire. Or thus; quod ipse de vita sua per J.S. graviter & manifeste comminat". Or thus; quod ipse metuit de vita sua, sive de mutilatione membrorum suorum, sive de incendio domorum suarum per J.S. &c.*

*Another for the Peace.**To the Constables of, &c. And to either of them.**Cambr.*

**F**Orasmuch as *B. A.* the wife of *W. A.* of your said Town, Labourer, hath required Sureties of the Peace against *T. B.* of your said Town, Butcher, and withall hath taken her corporal Oath before me, that she required the same not for any private malice, hatred, or evil will, but simply that she is afraid of her life, (or the hurting or maiming of her Body, or the burning of her Houses,) These are therefore to will and require you, and in his Majesties name to charge and command you, that immediately upon the sight hereof, you, or any of you, require the said *T. B.* to come before me, or some other of his Majesties Justices within the said County, to find sufficient Sureties, as well for his appearance at the next general Quarter Sessions of the Peace to be holden for this County, as also that the said *T. B.* shall in the mean time keep his Majesties Peace, as well towards his said Majestie, as towards all his liege people, and especially towards the said *B. A.* And if he shall refuse so to do, that then immediately you do convey the said *T. B.*, or cause him to be conveyed, unto the common Gaol at the Castle of *Cambridge*, there to remain until he shall willingly do the same. And see that you certifie your doings in the premisses to the Justices at the said Sessions; and have you there this Warrant Dated at, &c.

See before this Arrest.

*Or thus.*

**F**Orasmuch as *B.* the Wife of *W. A.* of your said Town hath personally come before me (*I. C.* Knight, one of the Justices of the Peace for the said County of *C.*) and hath taken her corporal Oath, that one *T. B.* of your said Town hath already assaulted, beaten, and bruised her the said *B.*, and farther hath threatned her in such sort, that she is afraid that the said *T. B.* will beat, wound, maim, or kill her, or do her some other bodily harm; and thereupon she the said *B.* hath prayed Security of the Peace to be had or granted her against the said *T. B.* These are therefore to will and require you, (&c. *ut supra*) to find sufficient Sureties (or to be bound with two sufficient Sureties) for his personal appearance at the next general Quarter Sessions of the Peace to be holden for this County, then and there to answer the premisses; and in the mean time that he the said *T. B.* keep the Peace towards our said Sovereign Lord the King, and all other his liege people, and especially towards the said *B.* And if he shall refuse thus to do, that then (*ut supra*.)

*A Warrant for the Peace upon a Supplicavit.**Cambr.*

**C**hristopherus Hatton Knight, one of the Justices of the Peace within the County of *Cambridge*, to the Sheriff of the said County, the High Constables of the Hundred of *R.* the pety Constables of the Town of *B.* and to all and singular the Kings Majesties Bailiffs and other Ministers, as well within Liberties as without in the said County, and to every of them, Greeting. Know ye, that I have received the Commandment (or Writ) of our said Sovereign Lord (in these words, reciting the whole Writ of *Supplicavit*; or only reciting the effect of the *Supplicavit*)



*cavit*, thus, to compel *A.B.* of, &c. to find sufficient Surety for his Majesties Peace by him to be kept towards, &c.) And therefore on the behalf of our said Sovereign Lord I command and charge you, joyntly and severally, that immediately upon the receipt hereof you cause the said *A.B.* to come before me at my house in *Chevely*, to find sufficient Surety and Main-prise for the Peace, to be kept towards our said Sovereign Lord, and all his liege people, and especially towards the said *C.D.* and if the said *A.B.* shall refuse thus to do, that then you him safely convey, or cause to be safely conveyed, to his Majesties Gaol at the Castle of *Cambridge*, (or to the next Gaol of his Majestie in the said County) there to remain until that he shall willingly do the same, so that he may be before the Justices of the Peace of our said Sovereign Lord within the said County, at the next general Sessions of the Peace to be holden for the said County, there to answer to our said Sovereign Lord for his contempt in this behalf. And see that you certifie your doings in the premisses to the said Justices at the said Sessions, bringing then thither this Precept with you. Yeoven at                      aforesaid, under my Hand and Seal, the fourth day of, &c.

The Return of this Writ, and Certificate of the Justices doings herein, see here before in the Title of *Surety for the Peace, cap.*

*A Warrant for the Good behaviour.*

Any one of these is sufficient, or any other like cause: whereof see his cap.

Forasmuch as *A.B.* of your said Town is not of good name or fame, nor of honest conversation, (but an Evil doer, a Rioter, Baretter, and perturber of the Peace of our said Sovereign Lord) as we are given to understand by the complaint of sundry credible persons: Therefore on the behalf of our said Sovereign Lord we command you, and every of you, that immediately, &c. you cause the said *A.B.* to come before us, or some other of our fellow Justices, to find sufficient Surety and Main-prise, as well for his Good appearing towards our said Sovereign Lord and all his liege people, until the next Quarter Sessions of the Peace to be holden in the said County, as also for his appearance then and there. And if he shall refuse so to do, that then, &c. (as in the Warrant for the Peace.)

*Or thus.*

Forasmuch as we have been credibly informed that *S.W.* of your Town, &c. is a man of Evil behaviour, one that daily moveth discord, strife, and dissension among his Neighbours, and a common perturber of his Majesties Peace: These are therefore in the Kings name to command you, &c.

*A general Warrant for Misdemeanour.*

*Thomas Chickeley* Esq, one of the Justices, &c. to the Constables of, &c. and to every of them. These are to will and require you, and in His Majesties Name streightly to charge and command you, and either of you, that immediately upon the sight hereof, (or upon Monday next by eight of the clock in the forenoon) you bring *J.H.* of your said Town Butcher, before me, to answer to such matters of Misdemeanor as on His Majesties behalf shall be objected against him. And hereof fail you not at your perils. Dated at, &c.

*Ano.*

*Another for Misdemeanor.*

Cambr.

**T**Hese are to will and require you, &c. that immediately upon the sight or receipt hereof, you attach the bodies of *A. B.* and *C. D.* &c. (or of all and every the persons here-under named) and to bring them forthwith before me, to answer unto such matters of Misdemeanor as on his Majesties behalf shall be objected against them. And hereof fail you not at your perils. Dated, &c.

*To attach one for Felony.*

Cambr.

**F**Orasmuch as complaint hath been made unto me by *C. D.* that of late he hath had certain Goods feloniously taken from him, and that he hath in suspicion one *K. G.* of your said Town: These are therefore to will and require you, &c. presently upon the receipt hereof, to attach the body of the said *R. G.* and thereupon to bring him before me, to answer to the premises. And hereof fail you not at your perils. Dated, &c.

“Upon a Complaint to a Justice of Peace of a Robbery committed, he cannot issue out his Warrant to arrest all parties suspected, but must specify them, as was resolved *P. 24 Car. 1.* in Evidence in *Mr. Swallows Case.*”

*Another.*

Cambr.

**T**Hese are to will and require you, &c. presently upon the receipt hereof, to attach the body of *A. B.* and bring him before me, to answer unto such matters of suspicion of Felony as on his Majesties behalf shall be objected against him. And hereof fail you not at your perils. Dated, &c.

*Another.*

**T**Hese are to will and require you, &c. to attach, &c. to answer unto the felonious taking of certain Goods, wherewith he is charged by *F. S.* And hereof fail you not, &c.

*To search for Stolen Goods.*

**V**Hereas complaint hath been made unto me by *N. O.* that of late he hath had feloniously taken from him certain Goods, and that he hath in suspicion divers lewd and evil-disposed persons within your Parish: These are to will, &c. that immediately upon the receipt hereof you make diligent search in all and every such suspected houses and places within your Parish, as you and this Complaint shall think convenient: & if upon your search you find any of the said Goods, or other just cause of suspicion, that then you bring all such suspected persons as you shall find before me, to answer unto the premises. And hereof fail you not, &c.

And

*Another.*

**W**Hereas Complaint hath been made unto me *Robert Hatton Cambr.* Knight, one of the Justices, &c. by *I. S.* of, &c. that upon Monday night last he had feloniously taken from him certain Goods, [they would be named] and that he is given to understand, that there are divers parcels of such Goods in the hands or houses of certain suspected persons within your Town: These are to will, &c. that you be aiding to and assist the said *I. S.* (the Bearer hereof) with your best endeavours, whereby he may the better come to the sight and view of the same Goods, that so he may the better judge or know whether the said Goods, or any part of them, are his; and if he shall find the same Goods, or any of them, that were stolen from him; or if he shall challenge or claim any of the said Goods in the possession of any of the said suspected persons, that then you do presently attach the Bodies of all such suspected persons within whole custody, house, or possession, you or he the said *I. S.* shall so find the same, and them (together with the said Goods) forthwith bring before me, or some other of His Majesties Justices of Peace for this County, to make answer thereto. And hereof fail you not, &c. Dated, &c.

*To bind men to give in Evidence.*

**T**Hese are in the Kings Majesties Name to charge and command you, *Cambr.* &c. that presently upon the sight hereof you, or some of you, do cause to come before me, (or some other of His Majesties Justices of Peace of this County) the persons here under named, to the end that they and every of them may be bound to make their Personal Appearance the next general Gaol-delivery (or Quarter Sessions) to be holden for this County, then and there to testify their and every of their knowledges concerning certain Felonious acts committed by one *A. B.* now a Prisoner in the Castle of *C.* &c. And hereof fail you not, &c.

*A Warrant for a Search after a Robbery committed, directed to the High Constables.*

**W**Hereas there hath been many Robberies lately committed about, &c. Now for the better finding out of the same lewd persons, we whose Names are here under written, being His Majesties Justices of Peace (for the County of *Cambridge*) have thought good, and do hereby will and require you in His Majesties Name, that forthwith you direct your Precepts to every Petty Constable within your (several) Hundreds, (commanding them) to make search in all Inns, Alehouses, and other suspected Houses within your Precincts, for all such persons as are Masterless or out of Service; as also for all idle, vagrant or wandering Rogues, Beggars, or other persons: and farther, that they the said Petty Constables within your Precincts do take examination and account of all those, and such other persons as be common Alehouse haunters, or which expend their Money in Riot, or which do not labour for their living, and have not whereon so to maintain them. And that the same Searches be holden all over in your Hundreds in one night, and at such other several times as to your discretion shall seem meet. And if any such persons shall be found in the same Searches, and that upon your or  
the



the Pety Constables Examination taken of them, or any of them, there shall be found any cause of Suspicion in them, or any of them, that then they bring the same persons so suspected before us, or some one of us, or some other of the Justices of the Peace of this County, to be farther examined in the said Causes, 'and to be farther dealt withall according 'to Law and Justice. And for the better doing hereof we require you to command in His Majesties Name, that every Pety Constable within their Precinct do require (and charge) two chief discreet Headboroughs in every Parish to assist them the Pety Constables in this Service. And hereof fail you not, &c.

*A Hue and Cry after Robbers, &c.*

*To all Constables and other His Majesties Officers, as well within the County of Cambridge, as elsewhere within the Realm of England.*

**V**Hereas complaint hath been made unto me *M.D.* Vice-Chanc. of the University of Cambridge, one of his Majesties Justices of Peace within the said County of Cambridge, by *I. S.* of, &c. Husbandmen, that upon Tuesday at night last (being the 15 day of this instant November) he was robbed of certain Linen taken out of his house, with some other things, and that he hath manifest cause of suspicion of one *A. B.* a lewd Rogue, (here describe his personage and apparel :) These are to require you, and every of you, to make search within your several Precincts for the said *A. B.*, and also to make Hue and Cry after him from Town to Town, and from County to County, and that as well by Horse-men as Foot-men: And if you shall find him the said *A. B.*, that then you carry him before some one of the Justices of Peace within the County where he shall be taken, by him to be dealt withall according to Law, &c.

They would be named.

*A Warrant for one who hath dangerously hurt another.*

Cambr.

**F**Orasmuch as I am credibly informed that *I. B.* of your Town, Blacksmith, hath now lately and dangerously hurt one *T. G.* of your said Town, Husbandman, by a blow which he hath given the said *T.* on the face, and another on the back, so as the said *T.* is in danger of death thereby: These are therefore in his Majesties name streightly to charge and command you, that immediately upon the sight hereof you, or any of you, do bring the said *I. B.* before me, or some other of his Majesties Justices of the Peace of this County, to find sufficient Sureties, as well for his appearance before his Majesties Justices at the next general Gaol-delivery to be holden for this County, then and there to answer unto the Premises, and to do and receive therefore that which by the Court shall be enjoyned him: as also that the said *I. B.* shall in the mean time keep the Kings Majesties Peace towards his said Majesty and all his liege people, and especially towards the said *T. G.* And hereof fail you not at your perils. Dated, &c.

*For the reputed Father of a Bastard-child.*

Cambr.

**V**Hereas complaint hath been made unto me *H. B.* Serjeant at Law, one of his Majesties Justices, &c. by *K. I.* of your said Town, single woman, that she is gotten with child by one *T. S.* also of your

your said Town, Butcher : These are therefore to will and require you, and in his Majesties name to charge and command you, and either of you, that presently upon the receipt hereof you attach the body of the said T. S. and thereupon bring him before me, (or some other of his Majesties Justices of the Peace for this County,) to find sufficient Sureties, as well for his appearance at the next general Sessions of the Peace to be holden for this County, as also for his good behaviour towards his Majesty and all his liege people in the mean time. And hereof fail you not, as you will answer the contrary at your peril. Dated, &c.

*An Order for a Bastard-child.*

Bulfr.  
part. 2. p.  
341.

"IF the Justices make an Order, from which the reputed Father appeals, and gives Security to abide the Order of Sessions, at Sessions another Order is made for refusing to obey, by which they commit him; this is illegal, for they ought to prosecute him on his Security.

"*Hammonds Case, M. 3 Car.*

Ib. p. 342,  
343.

"And an Appeal being made to Sessions from the first Order, the Sessions ought to confirm or quash the first Order; and if the Sessions repeal the first Order, they may refer it back again to the Justices; but if they neither quash nor affirm it, they cannot refer it back. "*Smiths Case.* And if the Justices at Sessions repeal the first Order, then it is *res integra*, and the Recognizance ought to be in the disjunctive, to perform the Order, or to appear at Sessions; and for not obeying the Order one Justice of Peace may commit, and but one of the two next Justices disavow the Order. *Quere* what is to be done.

Ib. p. 343.

"One hath a Bastard, and is not punished for it by 7 *Fac. 4.* and she hath another Bastard, she shall not be punished for this last as for a second Offence by 7 *Fac. 4.* unless she had been punished for the first. "*Fones Justice at Salop, Lent 7 Car.*

Ib. p. 343.

"A Servant Maid is begot with child at T. but by an artifice she is conveyed to a Hovel of one of the Parish of T. upon the Confines of that Parish, but in truth within another Parish, where a Child is born. *Fones Justice of Assize* declared, that in case such practice be proved, the Child shall not be kept by the Parish where it was born, but where she was got with child.

Ib. p. 350.

"One B. a Servant Maid was begot with child by one R. at D. and the Child born there, R. takes it from the Mother, and puts it to nurse, and marries another Woman, and keeps the Child with him 10 or 11 years together, and died, leaving a Wife and divers Children, which she was not able to maintain, but they were relieved by the Parish. The Mother of the Bastard for the most part lived in Service, and had 3 *l. per ann.* left her by her Friends, but was not in her own hands: she was still able to do some work, but was a Woman of weak Understanding. *Fones and Whitlock at Salop Lent Assizes 7 Car.* resolved, that the Child is to be sent to the Mother, if she be able to maintain it, if not, to the place where it was settled 10 years with the Father.

"*The Order of Sir I. M. Knight and M. D. Esquire, two of the Justices of Peace of the County of C. made for the relief of the Parish of W. in the said County, for the keeping of B. a Bastard-child begotten by T. S. of, &c. on the body of K. I. &c.*

"*In primis*, upon the Examination of the said K. duly by us taken, we do find that the said T. S. is charged to have had divers times bodily

and carnal knowledge of her (between such times,) and to be the onely Father of the said Bastard-child, &c. and therefore we do order and adjudge him to be the reputed Father of the said Child.

'We do farther order as followeth: First, that the said *K.* shall keep her said Child untill it come to 8 years of age.

'Secondly, that the said *T.S.* upon notice of this Order, shall, after such notice, pay into the hands of one of the Overseers of the Poor of *W.* (for the time being) after the rate of 00 every week, to be paid monethly every year, towards the relief of the said Child, untill it comes to 8 years of Age.

'Thirdly, that after the said Child shall come to 8, &c. that the said *T.S.* pay to the Overseers, &c. 5 *l.* toward the putting out of the same Child to be Apprentice, &c.

'Fourthly, that the said *T.S.* presently give good Security to one of the Overseers, &c. to perform this our Order.

*Touching the Order of the Justices next the place according to*  
18 El. 3. observe:

"1. **T**hat if the party appeal to the next Sessions, and the Justices there make an Order thereupon, it is final, and cannot be altered by any after Sessions. And this is expressly resolved in *Pridgions* case, *Fones* 330. & *Cro. Car.* 1.

"2. It must appear by the Order that the Justices of Peace making the Order, are the next Justices of Peace to the Parish Church where the child was born, and that one of them is of the *Quorum*. *Styles* 154.

"3. It must appear that the child was a Bastard, and born in the Parish, towards whose relief provision is made thereby, and an Order for that cause was quashed. *H.* 1652. *B.R.* *Styles* p. 368.

"4. The payment must be made to continue so long time as the child shall be chargeable to the Parish, and if not so made it is void, *Styles* 154. for the party may take it and keep it himself: and where the Mother is able, the Justices have nothing to do in the case.

"5. The Justices of Peace may adjudge a reasonable Summe in gross to be paid to the Parish for the charge of the Womans lying in; and this I have known often ruled good.

"6. None else can be made chargeable to the keeping of it, but the reputed Father or Mother, and the Master for suffering it to be begot in his House.

"7. It must be positively declared and adjudged who is the Reputed Father, and not to repeat what Witnesses say, or what the Mother saith, but the Order must be positive and absolute, for it is a Judgment in the case, and every Judgment must be positive and certain.

"By 3 *Car.* 1. the Justices of Peace in Sessions have the same Authority given them, as was given the two next Justices by 18 *El.* 3. and the same Rules are to be observed in drawing their Order *mutatis mutandis*.

*Where a Maid Servant is gotten with child, and from thence sent to her place of Birth.*

**F**Orasmuch as *I.M.* for the space of \_\_\_\_\_ years now last past hath dwelt in the Parish of *W.* (in the County of *E.*) and being there settled in Service with *T.B.* of *W.* aforesaid, who was gotten with child, and



and being so with child is now sent or conveyed to your Town of *B.* under colour that she was there born, to the burthening of your said Town, and contrary to Law: These are in His Majesties Name to charge and command you safely to convey the said *I.* to *W.* aforesaid, there to be set on work, or otherwise to be provided for according to Law. And that you deliver and leave, or offer to leave, the said *I.* to and with some one of the Churchwardens or Overseers for the Poor of the Parish of *W.* aforesaid. And hereof fail you not, &c.

Note, that such Maid Servant cannot be sent from the place where she is (or last was) in Service to the place of her Birth, but must set her self to labour where she last dwelt or served, being able of Body: or being impotent, she is to be relieved by the Town where she last dwelt or served. See *hic antea tit. Poor.*

*A Warrant for Overseers to give up their Accounts.*

*To the High Constables of the Hundred of, &c.*

These are in the Kings Majesties Name to charge and command you forthwith to give warning to the Churchwardens, and other the Overseers of the Poor of every Parish within your Hundred, that they do personally appear before us at *New Market*, at the Sign of the Greyhound there, upon Tuesday the tenth of *June* next coming, by nine of the clock in the Forenoon of the same day, to yield up, and to make a true and perfect account in writing, subscribed with their Names or Marks; of all such Summes of Money as they have received, or rated and assessed and not received, for and towards the relief of the Poor of their several Parishes, and also of such Stock (to set their Poor on work) as is in their hands, or in the hands of any their said Poor to work, and of all \* other things concerning their said Office: and hereof that you fail not at their or every of their perils. And farther we require you that you give warning to the Pety Constables of every Town within your said Hundred, that they or one of them be also then and there present before us, to inform and certifie us of the Names of such other persons as are meet and fitting to be Overseers of the Poor within their several Towns, for this year next ensuing. And hereof fail you not, &c.

And this Warrant must be under the hands and seals of two Justices at the least, the one of the *Quorum. Vide tit. Poor.*

*A Warrant to new Overseers to take their Charge.*

BY virtue of the Statute made in the three and fortieth year of the Reign of our late Sovereign Lady Queen *Elizabeth*, (intituled, *An Act for the relief of the Poor*) These are to will and require you whose names are hereunder written, that you together with the Churchwardens of your Parish for the time being, do (according to the same Statute) take order from time to time, for this year to come, for the setting to work of the Poor within your Parish, and for the raising of a convenient Stock of some Ware or Stuff in your Town to that purpose; and for the providing of necessary relief for such as be lame and impotent amongst you; and for the placing as Apprentices such Children whose Parents are not able to maintain them: And hereof see that you fail not at your perils. Dated under the hands and seals of us *J.S.* and *J.D.* two of His Majesties Justices of the Peace within the said County of *Cambridge.*

\* See what they be in the title Poor.

This Warrant must be under the Hands and Seals of two Justices.  
*Vide antea, tit. Poor.*

*A Warrant to Distrain such as refuse to pay their Rates for the Poor.*

But first the Justices shall do well to send their Warrant for the Offenders to make answer to the Complaint, and after to grant their Warrant, if they find cause. See his cap. 2 & 7.

Or else the Justices may make their Warrant after this manner:

To the Church-wardens, and other the Overseers for the Poor within the Parish of W, and every of them.

Cambr.

Forasmuch as we are credibly informed, or that it hath been duly proved before us, that the persons hereunder named do refuse to contribute or pay the summs of money hereunder mentioned, (set upon their heads) being assessed and rated upon them severally, for and towards the necessary relief of the Poor of your said Town, according to the form of the Statute in that behalf lately provided: These are therefore in his Majesties Name to charge and command you, and every of you, forthwith to require and cause the said persons (so refusing) to be before us, to shew the cause of their said refusal: And if they or any of them shall refuse to come before us, that then immediately you do levy all and every the said several summs of money unpaid, and all the arrearages thereof, of all and every the said persons so refusing, by Distress and Sale of the Offenders Goods, you rendring unto the parties the overplus that shall remain upon the Sale of the said Goods. And this shall be your sufficient Warrant therein. Dated, &c. *Vide antea, tit. Poor.*

Another.

To the Church-wardens, &c.

Cambr.

These are in his Majesties name to charge and command, and every of you, presently to demand of all and every the persons hereunder named, all and every the several summs of money hereunder severally written, or set upon their heads, being assessed and rated upon them for and towards the necessary relief of the Poor of your said Town, according to the form of the Statute in that behalf lately provided: And if they or any of them shall refuse to pay the said several summs of money so rated upon them, that then presently you levy the same by Distress and Sale of the Offenders Goods, rendring to the parties the overplus that shall remain upon the Sale of their said Goods. And this shall be your sufficient Warrant therein. Dated, &c.

These two last Warrants must be also under the hands and seals of two Justices, &c.

And in all cases of Distraining and Sale of an Offenders Goods, and rendring the party the overplus, the Apprisement of such Goods would be made by four of the honest Inhabitants of the Parish where such Goods remain and be, according to the Statute of 3 Fac. cap. 10. in like case.

*A Warrant for a general search for Rogues.*

*To the High Constable of the Hundred of, &c.*

**T**Hese are in the Kings Majesties name to charge and command you, *Cambr.* that you, together with the pety Constables of the several Towns, Parishes, and Hamlets within your Hundred, (taking sufficient assistance out of the said Towns) do make a general privy search within every of the said several Towns, Parishes and Hamlets, upon *Tuesday* at night next coming, for the finding out and apprehending of all Rogues, Vagabonds, and wandring and idle persons, in or about your said several Towns, Parishes, or Hamlets; and that such as shall be found and apprehended, you do cause them to be brought before us the next day unto *Le.* by nine of the clock, there to be by us dealt withall according to the late Statute in that behalf provided. At which time and place we farther require you, together with the said pety Constables to appear before us, and there to give an account and reckoning upon Oath, in writing, and under the hands of the Minister of every several Parish within your Hundred, what Rogues, Vagabonds, wandring and disordered persons have been there apprehended, as well in the same search, as also since the last Assembly and Meeting that was made for this purpose, being upon or about the 20. day of *July* last past. And hereof fail you not, &c.

What the  
Justice  
shall do  
with them  
see infra.

See the  
title of  
Rogues.

**N**ote that all Rogues which shall be brought before the Justices upon such search (after Examination of their idle life taken by the Justices) are either to be whipped by the Constables of the Town where the Justices sit, (as it seemeth,) or rather the Constables of the Town where the Justices sit may procure some other to inflict the punishment of Whipping of all such Rogues as are brought thither; and the Constables that brought those Rogues from other Towns, to contribute and give content to such persons as shall whip them; or else such Rogues are from thence to be sent to the House of Correction, and to be conveyed thither by the Constables that brought them, and yet at the charge of the Hundred: which services imposed upon the Constables are some cause of their neglect of this Service; and therefore I have set down another course and Precedent, perhaps no less serviceable, which also may be performed and done every month, or every Meeting of the Justices, if need shall so require: or if the Justices cannot, or shall not meet, yet, it seemeth, such Warrant may be granted out by any Justices of Peace as followeth.

**T**Hese are in the Kings Majesties name to charge and command you, *Cambr.* that you, together with the pety Constables of the several Towns, Parishes and Hamlets within your Hundred, (taking sufficient assistance out of the said Towns) do make a general privy search within every of the said several Towns, Parishes and Hamlets, upon *Thursday* at night next coming, for the finding out and apprehending of all Rogues, Vagabonds, and wandring and idle persons, in or about your said several Towns, and that such as shall be found and apprehended, you do cause them to be punished in every several Town or Parish where they shall be so apprehended, by the pety Constables of every several Parish respectively, and by them also farther to be conveyed according to the Statute: And if any of the said Rogues shall appear to be dangerous



or incorrigible, that then you cause such to be brought before me, or any other of his Majesties Justices of the Peace of this Division, to be farther dealt withall according to the Statute in such cases provided. Dared, &c.

Afterwards any one of these Justices may take the Examination of, or proof against, such dangerous Rogue, and finding cause, (sc. finding that he hath offered any violence, or used any threatening speeches, or other like misdemeanor towards any person, or that he hath been formerly punished, and sent home, or that he affirms untruly where he was born, or will not be known, or knows not where he was born, or last dwelt, for then it is apparent that he hath been and continued a Rogue of a long time) in every such case the Justice may then joyn with any other Justice of Peace of that Limit, being of the *Quorum*, and commit such Rogue to the House of Correction or Gaol, as an incorrigible Rogue, although the said two Justices shall not meet together about it.

39 EL.  
ac. 7.  
P. 2. 4

*A Warrant for a Fugitive Servant.*

*To the Sheriff of, &c.*

**W**Hereas *J. E.* being lawfully retained in Service with *N. A.* of, &c. is departed from his said Master's Service before the end of his term, without his Master's leave or licence, (or without any reasonable cause) contrary to the Laws and Statutes of this Realm in this behalf provided: These are therefore to command you, and every of you, that you, or some one of you, do attach the body of the said *J. E.* and bring him before me, (or some other Justice of Peace, &c.) to find sufficient Sureties, well and faithfully to serve his said Master, according to the Covenant between them made: and if he shall refuse thus to do, that then you cause him to be conveyed safely to the common Gaol, &c. (as before, in a Warrant for the Peace.) Given under the Hand of me *T. S.* one of his Majesties Justices of Peace within the said County.

Or thus: That the said *J. E.* to his said Master to serve again you do cause to be delivered: and if that to do he shall refuse, that then you cause him to be conveyed to the Gaol, &c.

*A Warrant for one refusing to Serve.*

Cambr.

**M**ichael Dalton Armig<sup>r</sup>, unus magistr. Cur. Cancellar. & unus Just. &c. Cromp.  
R. L. Ballivo de S. in Com. pred. salut. Ex parte dicti Dom. Reg. ti.  
bi manda, quod attaches R. A. de S. pred. Labourer, ita quod cum habeat  
coram me vel sociis meis Just. dicti Dom. Regis ad Pacem in Com. pred. con-  
servandam, nonnulla alia divers. Felonias, Transgress. aliqua malefacta in ad-  
dem Com. audiend. & term<sup>s</sup>, assign<sup>s</sup>, ad prox. general. Sess. Paris in Com.  
pred. tenend<sup>s</sup>, ad respond. tam dicta Dom. Regi, quam B. C. de A. & B. Yeo-  
man, quare ipsi pred. R. A. sit in servitio congruo pro statu suo per ipsos  
B. C. fusi sepius requisiti ei servire, ipsi tamen B. C. servire penitus recusant  
in contemptu dicti Dom. Regis & ipsius B. C. grave dampnum, & contru-  
sionem Statuti de servitibus impert. edit. & provis. Et habeat ibi tam hoc  
Mandatum, Telle, &c.

And yet see the Statute 4 *El.* cap. 4. whereby the departure of a Ser-  
vant, and refusing to serve, &c. are referred to two Justices of Peace,

to

by

by them to be first examined, and then the Offenders to be committed, if they be faulty therein. See *ante*, viz. *Labourers, and Warrants*.

*For Ale-house-keepers to renew their Recognizances.*

**J**ohn Sr. George Esquire, one of the Kings Majesties Justices, &c. These are in the Kings Majesties name to require you, that you direct your Precepts to every pety Constable within your Hundred, requiring them, that they warn all Ale-house-keepers and Victuallers in their severall Towns within your said Hundred, to be and personally to appear before us at *Linton* upon *Thursday*, &c. then and thither bringing with them their former Licences, and farther, that every of them bring with them a Certificate of their fitness and honest behaviour in keeping of their Ale-houses and Victualling-houses, under the hands of four at the least of the most substantial, honest, and discreet Inhabitants of the Parishes where they so keep or dwell. And hereof fail you not, &c.

*A Warrant for the suppressing of an Ale-house.*

**T**homas Pepis and Isaac Barrow Esquires, two of the Kings Majesties Justices of Peace within the said County of *Cambridge*, to the Constables of *B.* and either of them, Greeting. Whereas we are credibly informed, that *R.D.* of your Town, Victualler, is himself a man of evil behaviour, and besides doth suffer evil rule and disorder to be kept in his house, contrary to the Laws and Statutes of this Realm: These are therefore to will and command you forthwith to repair to the house of the said *R.D.* and to charge him to surcease from keeping any longer any Ale-house or Tippling-house, and from common selling of Ale or Beer at his peril, and withall that you cause his sign to be pulled down: Hereof fail you not, as you and either of you will answer to the contrary at your peril. Given under our Hands and Seals at *B.* the 20. day of *August* and in the year of our most gracious Sovereign Lord *Charles*, &c.

*A Warrant to levy money forfeited by Ale-house-haunters.*

**J**ohn Gill Esq; one of the Kings Majesties Justices of the Peace within the said County of *Cambridge*, to the Constables and Church-wardens of the Parish of *W.* and to every of them, Greeting. Forasmuch as it hath been duly proved before me, according to the Statute in that behalf provided, that all and every the persons hereunder named, being Inhabitants within your Parish of *W.* upon the twelfth day of this instant Moneth of *November* have been and continued drinking and tippling in the house of *G.W.* of your said Town (Inn-keeper, or Ale-housekeeper) contrary to the form of the same Statute: These are therefore in his Majesties name to charge and command you, and every of you, forthwith to levy by Distress and sale of the Goods of every the said persons hereunder named the sum of three shillings and four pence apiece, if they shall refuse or neglect forthwith to pay the same, (which several Forfeitures shall be bestowed and employed by you to the use of the Poor of your said Parish) and that you render to every of the said Offenders the overplus that shall remain upon your sale of their said Goods: and if the said Offenders, or any of them, shall refuse or neglect

left to pay their said several Forfeitures, and that you can find no sufficient Distress whereon to levy the same, that then you the Constables, or one of you, shall commit every such Offender or Offenders (refusing or neglecting to pay the said summe or Forfeiture, and not having sufficient whereon to be distrained for the same) to the Stocks, there to remain by the space of four hours. And this shall be your sufficient Warrant herein. Dated &c.

But before the Justice of Peace shall grant these two last Warrants, or the like, he shall do well first to send for the Offenders, and to examine them of the Offence, &c. See *hic* antea.

*A Warrant to condemn all Victuallers, &c. to put in Sureties for observing Fish-days, according to the Proclamation made by the High Constables of the Hundred of Radfield, and to either of them.*

THESE are in the Kings Majesties name to command you to warn all the Inne-holders, Taverners, Cooks, Ale-house-keepers, Butchers, and other Victuallers whatsoever within your Hundred, personally to appear before us at *Lanton* upon Tuesday, being the twentieth day of this instant *February*, at the sign of the *Griffin* there; and to bring with them Sureties that shall enter into Bond with them, to his Majesties use, for the due observation of the Orders lately published for the restraint of killing, dressing, and eating of Flesh in Lent, or upon Fish-days, according to his Majesties Proclamation in that behalf; and that you, or one of you, be then and there with us, to deliver us a note in writing of the names, Surnames, and dwelling-places of every of them, and of all other that victual without Licence within your Hundred, as you will answer the contrary at your perils. Dated at *West Wrattling* the first day of *February*, &c.

*Against Ale-house-keepers.*

ALSO a Warrant (like unto the last but one) may be made to levy the Forfeiture of Inn-keepers or Ale-house-keepers, for suffering Townsmen or others to continue drinking in their house, or for selling less then one quart of their best Beer or Ale for 1. d. saving that the Distress taken of such Inn-keepers and Ale-house-keepers is not to be sold till after six days; and then for default of satisfaction, the same are presently to be appraised and sold, and therefore such Warrant must herein be made accordingly. See *1. Fac. cap. 9. P. 7, 8.*

*To levy the Forfeiture for not keeping the Affize, &c.*

*Thomas Tirrel Esq;* one of the Kings Majesties Justices, &c. Forasmuch as it hath been duly proved before me (according to the Statute in such case provided) that *G. W.* of your said Town Ale-house-keeper, hath lately uttered or sold (in his house) less then one full Ale quart of the best Beer for one penny, contrary to the form of the same Statute: These are therefore in his Majesties name to charge and command you, forthwith to levy, by distress of the Goods of the said *G. W.* the summe of twenty shillings, the same to be bestowed and employed by you to the use of the Poor of your Parish: And if the said *G. W.* will



in six days next after such Distress by you taken shall not pay the said 20 s. that then you cause the said Distress presently to be prised and sold, and the overplus that shall remain upon your said sale of the said Goods, that you render the same overplus to the said G.W. And this shall be your sufficient Warrant herein. Dated, &c.

Before the Justice shall grant out these two last Warrants, he shall do well also first to hear and examine the Offenders.

A Warrant for the removing of a pety Constable, and for the swearing of another.

**C**AROLUS, Dei gratia, &c. Vicecom, Cantabr. necnon capitali Constabul. Hundredi de R. & eorum cuilibet, salut. Quia W.P. & R. S. Subconstab. villi de C. & K. (certis de causis nos movent.) ab Officio suo amoveri & exonerari fecimus (Ideo vobis & cuilibet vestrum, conjunctim & divisim, precipimus & mandamus, quod I. F. & R. M. ad omnia & singula eidem Officio incumbencia bene & fideliter exercenda & exequenda (prout ipsi nobis inde respondere voluerint) jurare faciatis: dictis W. P. & R. S. similiter injungentes, quod ipsi de dicto Officio ulterius exercendo & exequendo nullatenus se intromittant, quousque aliud de nobis habuerint mandatum. Et quicquid inde feceritis, Justiciariis nostris ad Pacem nostram in dicto Com. conservand. assign. ad prox. general. Sessionem Pacis apud C. in dicto Com. tenend. certificetis, hoc Preceptum nostrum tunc & ibidem remittentes. Teste Roberto Lawrence Armig<sup>r</sup>, uno Justic. nostrorum predict<sup>r</sup>, tali die, &c.

Lam. yy. 3

You shall find this former Precedent in M. Lamb. But upon such Warrant, *quare* who shall give the Oath to the new Constables, whether the High Sheriff, or High Constable that shall execute such Warrant, or the Justice of Peace that granted out such Warrant.

But for this authority of removing pety Constables, and of chusing and swearing new, it is reputed properly to belong to the Leet, (it being one of the ancientest Courts in the Realm, *Br. Leet. 14.*) And if the new Elect be not present at the Leet to take his Oath accordingly, then upon Certificate or notice thereof to any Justice of Peace of that County, the Justice doth use to send his Warrant for the parties so chosen, and to give them their Oath.

Also in default of the Leet, or otherwise, where there shall be just cause to remove a pety Constable for his insufficiency, or for any misdemeanor, or other, every Justice of Peace, *ex officio*, (as it seemeth) may remove the old Constables, and may chuse and swear new: which also we see to be warranted by common experience. See *Lamb.* of the Duties of Constables, pag. 19.

And I have seen some Precedents to such purpose, as followeth.

To our loving friend A.B. of W. Toman.

**T**Hese are in his Majesties name to charge and command you to make your repair unto us, or to some other Justice of Peace of this County, to take the Oath of a Constable to serve His Majestie within the Town of W, (\* according to the choice made of you by the Jury at the last Leet holden in your Town.) And hereof fail you not. Dated under the Hands of M.N. and N.O. Esquires, two of his Majesties Justices of Peace, &c.

\* If they were not chosen at the Leet this clause is to be left out.

The

*The Form of the Oath concerning the Office of a Constable.*

**Y**OU shall swear, that you shall well and truly serve our Sovereign Lord the King in the Office of a Constable. You shall see and cause His Majesties Peace to be well and duly kept and preserved, according to your power. You shall arrest all such persons as in your sight and presence shall ride or go armed offensively, or shall commit or make any Riot, Affray, or other breach of His Majesties Peace. You shall do your best endeavour (upon Complaint to you made) to apprehend all Felons, Barreters, and Rioters, or persons riotously assembled: and if any such Offenders shall make resistance (with force) you shall levy Hue and Cry, and shall pursue them untill they be taken. You shall do your best endeavour that the Watch in and about your Town be duly kept for the apprehending of Rogues, Vagabonds, Night Walkers, Eves Droppers, and other suspected persons, and of such as go armed, and the like: and that Hue and Cries be duly raised and pursued, according to the Statute of *Winchester*, against Murtherers, Thieves, and other Felons: and that the Statutes made for the punishment of Rogues and Vagabonds, and such other idle persons, coming within your bounds and limits, be duly put in execution. You shall have a watchful Eye to such persons as shall maintain or keep any common house or place where any unlawful Game is or shall be used: as also to such as shall frequent or use such places, or shall use or exercise any unlawful Games there or elsewhere, contrary to the Statutes. At your Assizes, Sessions of the Peace, or Leet, you shall present all and every the Offences done contrary to the Statutes made (1 *Fac. 4 Fac.* and 21 *Fac. Reg.*) to restrain the inordinate haunting and tipling in Inns, Alehouses, and other Victualling Houses, and for repressing of Drunkenness. You shall there likewise true Presentment make of all Bloud-sheddings, Affrays, Out-cries, Rescous, and other Offences committed or done against the Kings Majesties Peace within your limits. You shall once every year during your Office present at the Quarter Sessions all Popish Recusants within your Parish, and their Children above 9, and their Servants, (*sc.* their monethly absence from the Church) 3 *Fac. 4.* And you shall have a care for the maintainance of Archery according to the Statute. You shall well and duly execute all Precepts and Warrants to you directed from the Justices of Peace of this County, or higher Officers. You shall be aiding to your Neighbours against unlawful Purveyances. In time of Hay or Corn Harvest (upon request) you shall cause all persons meet to serve by the day for the Mowing, Reaping, and getting in of Corn or Hay. You shall in Easter Week cause your Parishioners to chuse Surveyors for the mending of the High Ways in your Parish. You shall have a care that the Mault made or put to sale in your Town, be well and sufficiently made, trodden, formed, and dressed. And you shall well and duly according to your knowledge, power, and ability, do and execute all other things belonging to the Office of a Constable, so long as you shall continue in this Office. *So help you God.*

This Oath I have set down the more largely, whereby to shew the principal matters whereof the Constables are chiefly to have care.

*The Form of a Superfedeas by a Justice of Peace.*  
CHAP. CLXXV. V. 122.

\*The Superfedeas is good, though it name neither the Sureties nor the Summe.

**R**ichard Love Doctor of Divinity, and Vice-chancellor of the University of Cambridge, one of the Justices of Peace of our Sovereign Lord the Kings Majesty within the County of Cambridge, to the Sheriff, Bayliffs, Constaibles, and other the faithful Ministers of our Sovereign Lord within the said County, and to every of them, sendeth Greeting. Forasmuch as *A.B.* of, &c. Yeoman, hath personally come before me at *W.* &c. and hath found sufficient Surety, that \* is to say, *C.D.* and *E.F.* &c. Yeomen, either of the which hath undertaken for the said *A.B.* under the pain of 20 *l.* and he the said *A.B.* hath undertaken for himself under the pain of 40 *l.* that he the said *A.B.* shall well and truly keep the Peace toward our Sovereign Lord and all his liege people, and especially towards *G.H.* of, &c. Yeoman, and also that he shall personally appear before the Justices of the Peace of our said Sovereign Lord, at the next general Sessions of the Peace to be holden for this County of Cambridge. Therefore on the behalf of our said Sovereign Lord I command you, and every of you, that you utterly forbear and surcease to arrest, take, imprison, or otherwise by any means (for the said occasion) to molest the said *A.B.* and if you have (for the said occasion, and none other) taken or imprisoned him, that then you do cause him to be delivered and set at liberty without farther delay. Yeoven at Cambridge aforesaid, under my Seal, this last day of *July*, &c.

*Alias.*

**H**enricus Bing *Serviens ad Legem, unus Justic' Dom' Regis, &c.* *Vic' ac omnibus & singulis Ballivis, Ministris, & fidelibus dicti Dom' Regis in eodem Com', & eor' cuilibet, salutem.* Quia *J. S.* suffic' secur' de Pace (& de bono gestu suo) erga dict' Dom' Regem, & precipue erga *W.T.* coram me invenit: Ideo ex parte dicti Dom' Regis vobis & cuilibet vestr' mando & precipio, firmiter injungens, quod de ipso *J.S.* pro hujusmodi secur' Pacis inveniend' cap' sive arrestand' omnino superfed': Et si ipsum *J.S.* ea occasione ceperitis sive imprisonaver', tunc eum deliberari fac', si ipse ea occasione, & non alia, detineatur. *Teste, &c.*

If the Prisoner be in the Gaol, see another Form, *hic postea sit. Liberate.*

Note that such *Superfedeas* is good, though it name neither the Sureties nor the Summes wherein they are bound: but yet it is the better Form to expresse them both, for then if it shall appear that the Sureties are not sufficient men, or not bound in sufficient Summes, better Sureties may be taken. And accordingly all the *Superfedeas* issuing out of the Chancery, Kings Bench, and Court of Common Pleas, do rehearse the Names of the Sureties and the Summes: and those things which the higher Courts do use, are the Rules and Orders for others to follow, &c.  
2 *H.7.f.1. Fitz. Superfed. 4.*

The



The form of a *Superfedeas* (by a Justice of Peace) upon a Writ of *Supplicavit* against an Infant.

*Canab.* **S**AMUEL COLLINS, *Sacra Theologia Doctor, unus Justic. Dom. Reg.* nunc ad Pacem in Com. prad. conservand. assignat, *Viccom. ejusdem Com.*, ac omnibus & singul. Ballivis, Constabular, ceterisque dicti Dom. Regis Ministris, tam infra Libertates quam extra, in Com. prad. salutem. Sciatis quod Breve dicti Dom. Reg. recepiam hac verba; CAROLUS, &c. (reciting here all the Writ verbatim) Et quia J.B. de, &c. J.S. de, &c. & prafat. C.A. coram me praf. Samuele Collins personaliter compauer, & pradiit. J.B. & J.S. manuceper. pro dicto C.A. qui infra etatem 21 ann. existit, viz. quilibet Manucaptor prad. in 20 li. quas recognover. se debere dict. Dom. Regi, ac concess. de terris & tenementis, bonis & catallis suis, ad opus dicti Dom. Reg. levand. viz. quod prad. C.A. dampnum vel malum aliquod alieni de populo dict. Dom. Reg. de corpore suo, vel de incendio domorum suarum non faciet, nec fieri procurabit quovis modo: Ideo ex parte dicti Dom. Reg. vobis & cuilibet vestrum mando, quod de coarctand. aut attachiand. dictum C.A. ad inveniend. Securitatem Pacis per ipsum gerend. erga dictum Dom. Reg. & cunctum populum suum, seu aliquem de eodem populo suo, coram vobis, seu aliquo vestro, inveniend., superfed., seu superfed. fac. omnino. Et si ipsum C.A. occasione prad. & non alia ceperitis, seu capi mandaver, & in prisona ipsius Dom. Regis sub custodia vestra detinueritis, tunc ipsum a prisona in qua detinetur sine dilatione deliber. fac. seu unus vestro deliberari fac. Teste me prafat. Sam. Collins, 22 die Nov. anno regni dict. Dom. Reg. &c.

Notaria-  
fant.

*Alias.*

*Canab.* **H**ENRICUS SMITH, *Sacra Theologia Doctor, &c. unus Just. Domini Reg.* &c. *Vic. Com. prad.*, necnon omnibus Constabulariis, Ball, ac aliis Ministris dicti Dom. Regis, & eorum cuilibet, salutem. Sciatis, quod Mandat. (aut Breve) Dom. Regis in hac verba recepi; CAROLUS Dei gratia, &c. (reciting all the Writ) Et quia J.B. de, &c. & J.S. de, &c. & praf. T.C. coram me praf. H.S. personaliter comp., et prad. J.B. et J.S. pro prad. T.C. manuceper., quilibet Manucapt. prad. sub pena 20. li. et prad. T.C. pro seipso assumpsit sub pena 40. li. de terris et catallis suis ad opus dict. Dom. Reg. levand. quod, &c. Ideo, &c. quod prad. T.C. dampnum vel malum, &c. ut supra.

*A Superfedeas for the Good Behaviour.*

**N**OTE, that upon good Sureties taken, (for the Good Behaviour) a *Superfedeas* of the Good Behaviour may be granted as for the Peace, *mutatis mutandis.* Crompt. 237.

Note also, that a *Superfedeas de Capiis indictatum de Transgression*, and so of an *Exigent*, may be granted by the Justice of Peace out of Sessions: For otherwise it were mischievous for the party, as well by reason of his Imprisonment, as also for that he may be Out-lawed before the Sessions, if the Justice of Peace might not take Sureties of him for his appearance; and all is but to appear to answer to the Indictment.

And M. Crompton is of opinion, that these may be granted by any one Justice of Peace; with whom agreeth the *Book of Entries*. But M. Lamb. thinketh it not in the lawful power of any one Justice of Peace to grant such *Superfedeas* at this day, but that it must be done by two Justices.

Crompt.  
234.  
Hic 275.  
Lib. Intr.  
601.  
Lamb. 508.  
ces

ces at the least, and the one being of the *Quorum*; nevertheless for that I find the old Precedents to run in the name of one Justice of Peace alone, I have drawn these accordingly, persuading notwithstanding the joyning of two Justices herein, and the one of the *Quorum*, if they may conveniently.

A Superfedeas de Capias indictatum de Transgress.

**T**homas Bambridge, *Sacra Theologia Doctor, unus fuit Dom' Regis nunc Cantab.* ad Pacem in Com' prad' conservand', necnon ad diversas Felon. Transgr. &c. in eodem Com' audiend' & terminand' assign', Vic. Com. prad. salutem. Quia C.D. de A. in Com' tuo Teoman, venit coram me, & invenit suffic' Manuaptos essendi coram Justic' dicti Dom' Regis ad Pacem in Com' prad' conservand', necnon ad diversas Felon', &c. in dicti Com' audiend' & terminand' assign', ad generalem Session' Pacis apud C. in Com' prad' prox' die tenend' ad respond' dicti Dom' Regi de quibusdam transgr', contempt', & offensis, unde indict' existit. Ideo ex parte dicti Dom' Regis tibi precipio, quod de capiend' prafat' C.D. seu ipsum imprison', aut eum ea ex causa aliquantulum molest', omnino superfed'. Et si eum ea ex causa, & non alia, ceperis, tunc ipsum sine dilatione deliber' facias. Teste me, &c.

Alias qui invenit Plegios pro Fine.

Cromp.  
234.

**T**homas Wilson *Sacra Theologia Doctor, unus fuit dicti Dom' Regis ad Cantab.* Pacem in Com' prad' conservand', necnon ad diversas Felon', Transgr', & alia malefacta in eodem Com' audiend' & terminand' assign', Vic' Com' prad', ac omnibus & singulis Ballivis, Constab', ceterisque dicti Dom' Regis Ministris, tum infra Libertates quam extra, in Com' prad' salutem. Licet nuper per Breve (vel preceptum) dicti Dom' Regis vobis seu uni vestr' precept' fuit, quod caperetis, seu unus vestr' caperet, A.B. de S. in Com' prad' Teoman, si invent' fuerit in eod. & ipsum salvo custod', ita quod haberetis, seu unus vestr. haberet, corpus ejus coram Custod. Pacis ac. fuit dicti Dom. Regis ad Pacem in Com. prad. necnon ad diversas Felon. Transgr. & alia malefacta in eod. Com. audiend. & terminand. assignat. apud Cantabr. tali die, ad respond. dicto Dom. Regi de contempt. & transgr. unde coram dict. fuit. indictatus existit. Quia modo prad. A.B. venit coram me, et invenit suffic. Plegios pro Fine suo cum dicto Dom. Rege pro pramiss. faciend. Ideo ex parte dicti Dom. Regis vobis conjunctim et divisim mando, quod ad executionem Brevis prad' ulterius faciend' superfed' omnino. Et si ipsum A.B. ea occasione, et non alia, ceperitis, et in prisona dicti Dom. Regis detinueritis, tunc ipsum sine dilatione ab eadem delib. faciatis, seu unus vestr. delib. faciat. Et habeatis, seu unus vestr. habeat, hoc precept. ad Sessiones prad. Dat. 3 die Aug. anno regni, &c.

Superfedeas de Capias pro Fine.

Cromp.  
234.

**J**ohannes St. George *Arm. unus fuit. Dom. Regis nunc ad Pacem in Com. Cantab.* prad. conservand. assign. Vic. Com. prad. salut. Quia C.D. de A. in dicto Com. Teoman, venit coram me, & invenit suffic. Manuapt. essendi ad prox. general. Session. Pacis in Com. prad. tenend. ad faciend. Finem cum dicto Dom. Rege pro quibusdam transgr. contempt. & offensis, unde indictatus existit. Ideo tibi precipio, quod de capiend' praf. C.D. imprisonand. seu ipsum ea occasione aliquantulum molestand. omnino superfed. Et habeas ibi tunc hoc precept. Teste me, &c.

## Superfedeas de Capias indictat' de Felonia.

Cantab.

**T** Albōt Pepis Armig' unus Fustic. Dom' Regis nunc ad Pacem in Com. Crom. prād' conservand' assign', Vic' Com' prād', necnon omnibus & singulis Bal.<sup>234</sup> livis, Constabulis, ceteris que dicti Dom' Regis Ministris, tam infra Libertates quā extra, in dict' Com' salutem. Quia A. B. de C. in Com' prād' Husbandman, venit coram me, & invenit sufficient' Secur' essendi coram Fust' dicti Dom' Regis ad Pacem in Com' prād' conservand', necnon ad diversas Felonias, Transgr', & alia malefacta in eodem Com' audiend' & terminand' assign', ad prox' general' Sessionem Pacis in Com' prād' tenend', ad respondend' dicto Dom' Regi de diversis Feloniis & Transgr' unde coram eis indictat' existit. Ideo ex parte dicti Dom' Regis vobis & cuilibet vestr' mando, quod de capiend' prād' A. B. ea ex causa supersead' omnino, & si eum ea occasione, & non aliā, ceperitis seu imprisonaver', tunc ipsum sine dilatione deliberari faciatis. Dat', &c.

## Superfedeas de Exig' fac' de Felonia.

Cantab.

**C**AROLUS, &c. Vic' Com' Cantabr' salutem. Quia C. D. de A. in Crom. Com' tuo Teoman, venit coram E. F. &c. et invenit sufficient'. Manu.<sup>234</sup> caption. essendi coram Custod. Pacis nostrae (ac Fust. nostris ad diversas Felon. &c.) ad generalem Session. Pacis nostrae apud C. tali die tenend. ad respondend. nobis de quibusdam Feloniis unde indictatus est. Ideo tibi precipimus, quod de ulterius exigend. prafat. C. D. ad aliqu. Comitatus tuum, vel imprisonandum sive ipsum ea occasione aliquantulum molestandum, omnino supersead. Et habens ibi tunc hoc Breve. Teste Willielmo Marche apud H. tali die & anno.

## Superfedeas ad deliberandum Prisonarium capt. pro transgressione vel similiter.

M. D. Armig', unus Fustic', &c. Constabulis Ville de B, necnon Custodi Gaola dicti Dom. Regis in Com. prād. salutem. Quia W. C. de B. Labourer, venit coram me, et invenit suffic. Secur. essendi coram Fustic. dicti Dom. Regis ad prox. general. Session. Pacis in Com. pradieto tenend. ad respond. tam Dom. Regi quā B. C. de quibusdam transgr. seu contemptibus, &c. per ipsum perpetratis. Ideo vobis et cuilibet vestrum mando, quod prād. W. C. a custodia vestra sine dilatione deliberari faciatis, et alio mandato meo inde direct. interim superseadeatis. Et hoc Mandatum meum erit vobis et cuilibet vestrum Warrant. Datum apud West Wratting tali die, &c.

## Recognizance. CHAP. CLXXVI. V. 123.

## A single Recognizance taken before Justices of the Peace.

Cantab.

**M**emorand. quod 20 die Junii anno regni Dom. nostri Caroli, Dei gratia, Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, Fidei Defensoris, &c. venerunt coram Mi. Dalton et Isaaco Barrow Armig. Fust. dicti Dom. Regis ad Pacem in Com. C. conservand. assign. I. S. de B. in Com. prād. Teoman. et W. S. de eadem Weaver, ac R. D. de S. in Com. prād. Tailor, et recognover. se debere dicto Dom. Regi, viz. quilibet Manucaptor prād. quinque librar. et prād. I. S. decem librar. bona et legalis moneta Angliæ, (solvend. eidem Dom. Regi in Festo Purificationis Beata Mariæ Virginis proximo futuro post datum prae-



present.) *Et nisi fecerint, concesserunt pro se, Hared. Executor. et Admini-  
strat. suis per presentes, quòd dicta separales summa leventur et recuperentur  
de maneriis, mejuagiis, terris, tenementis, bonis, catallis, et hereditamentis ip-  
sorum I.S. W.S. & R.D. Hared. Executor. et Assign. suorum, ubicunque fue-  
rint invent. Dat. &c.*

#### Another single Recognizance.

**M**Emorand. quòd 20 die Januarii anno Regni Dom. nostri Caroli, Dei <sup>Canab.</sup>  
gratiâ, &c. D.E. de Balsham in Com. præd. Teoman, personaliter ve-  
nit coram Mi. Dalton Armig. uno Fust. dicti Dom. Regis ad Pacem in Com.  
præd. conservand. assign. et recognoverunt se debere dicto Dom. Regi 10 l. bonâ  
et legalis moneta Angliæ, de bonis et catallis, terris et tenementis suis fieri et  
levari, ad opus dicti Dom. Regis, Hared. et Successor. suorum, si defecerit in  
Conditione indorsata.

#### Alias.

**M**Emorand. quòd 10 die Decembris anno regni, &c. vener. coram me <sup>Canab.</sup>  
M.D. uno Fust. &c. assign. T.H. de West Wrattling in Com. præd.  
Teoman, & I.S. de eisdem Vill. & Com. Husbandnan, & manuceper, &  
uterque eor. separatim manucepit, sub pæna 5 l. legalis moneta Angliæ, pro  
W.St. de W. præd. Tailor, & præd. W.St. assumpsit pro seipso sub pæna 10 l.  
consimilis moneta Angliæ; quas quidem separales summas recognover, &  
quilibet eor. (ut pradicatur) recognovit se debere dicto Dom. Regi, de terris &  
tenementis, bonis & catallis, suis fieri, &c. si præd. W.St. defecerit in perform.  
Condit. introscript.

If the party to be bound be within age, then he shall be bound by  
Sureties onely, (but he himself shall not be bound). and then shall the  
Recognizance be *ut supra* to this mark \*, and then as followeth: *Qui  
infra atatem 21 annor. existit. Quas quidem separal. summas recognover,  
& uterque eor. (ut pradicatur) recognovit se debere, &c. ut supra.*

#### A Recognizance for the Peace.

**M**Emorand. quòd 10 die Aprilis anno regni Dom. nostri Caroli, Dei gra-  
tiâ, &c. R.P. de E. in Com. præd. Teoman, in propria persona sua venit  
coram me Tho. Tirrel Armig. uno Fust. dicti Dom. Regis ad Pacem in dicto  
Com. conservand. assign. et assumpsit pro seipso sub pæna 20 l. et H.I. de L. in  
Com. præd. Teoman, et N. N. de, &c. et P.Q. de, &c. Husbandmen, tunc et  
ibidem in propriis personis suis similiter venerunt, et manuceper. pro præd. R.P.  
viz. quilibet eor. separatim sub pæna 100 s. quòd idem R.P. personaliter com-  
parebit coram Fust. dicti Dom. Regis ad Pacem, ad prox. general. Sessionem  
Pacis in Com. præd. tenend. ad faciend. et recipiend. quod ei per Curiam tunc et  
ibidem injungetur: Et quòd ipse interim Pacem dicti Dom. Regis custodiet er-  
ga ipsum Dom. Regem, et cunctum populum suum, et præcipue versus M.N. de  
A. præd. Teoman, et quòd damnum vel malum aliquod corporale aut grava-  
men præfato M.N. aut alicui de populo dicti Dom. Regis, quòd in lationem aut  
perturbationem Pacis ipsius Dom. Regis seu præfatum M. cadere valeat quovis  
modo, non faciet, nec fieri procurabit. *Quam quidam summam viginti librar.  
præd. R.P. et quilibet Manucaptor præd. prædictas separales summas centum  
solid. recognover. se debere dicto Dom. Regi, de terris et tenementis, bonis et  
Lib. Intr. catallis suis quorumlibet et cujuslibet eorum, ad opus dicti Dom. Regis, Hared.  
453. et Successor. suorum, fieri et levari, (ad quodrumcunque manus devenerint) si con-*

*tigerit ipsum R.P. pramissa, vel eor. aliquod, in aliquo infringere, et inde legitimo modo convinci. In cuius rei testimonium ego præd. Tho. Tirrel sigillum meum apposui. Dat. apud, &c.*

And if the Justice shall onely subscribe his Name to the Recognizance without his Seal, it is well enough, and so is the usual course and form with us, and that in either of these sorts, *sc. Recognit. coram me R.Th.* or onely to subscribe the Justices Name thus, *R.Th.*

Or thus for the Peace.

*Camab.*

**M**emorand. quod 20 die, &c. A.B. de A. &c. et W.D. de eadem Teomen, *Lam. 109i*  
venerunt coram me Johanne Layer Armig. uno Just. &c. et manuceper.  
pro I.S. nuper de L. &c. quod ipse personaliter comparebit coram me præfato  
Johanne Layer, et sociis meis Just. Pacis Dom. Regis ad prox. general. Sessionem,  
&c. et quod ipse interim geret Pacem erga cunctum populum Dom. Regis,  
et præcipue erga R.B. &c. viz. quilibet Manuapt. præd. sub pæna viginti  
librarum. Quam quidem summam quadragint. librar. præd. I.S. et quilibet  
Manuaprorum prædictor. dictam summam viginti librar. recognoverunt, &c.  
ut supra.

And this may be well done also by a single Recognizance in Latin *ut supra*, with a Condition added or indorsed in English, for the keeping of the Peace, and for the day and place of the parties Appearance at the Quarter Sessions, as followeth.

*A Condition to keep the Peace.*

**T**He Condition of this Recognizance is such, That if the within bounden I.S. shall personally appear before the Justices of our said Sovereign Lord the King at the next general Sessions of the Peace to be holden in the said County of Cambridge, to answer to such matters as shall be objected against him by R.B. within named, to do and receive that which by the Court shall be then and there enjoined him, and that he in the mean time do keep the Peace of our Sovereign Lord the King, towards the Kings Majesty and all his liege people, and especially towards the said R.B. of C. aforesaid, Yeoman: that then, &c.

A Recognizance for the Good Behaviour.

**M**emorand' quod 20 die mensis Novemb' anno regni Caroli, &c. R. G.  
de, &c. et H.C. et I.S. de eadem, &c. in propriis personis suis vener'  
coram nobis Isaaco Barrow et Roberto Haggar Armig. Just' dicti Dom'  
Regis, &c. Et præd' H.C. et I.S. manuceper' pro præfato R.G. et idem R.G.  
ad tunc assumpsit pro seipso, quod idem R.G. personaliter comparebit coram  
Just' dicti Dom' Regis ad Pacem, &c. ad proximam generalem \* Sessionem, \* See the  
&c. et quod ipse interim se bene geret erga Dom' Regem, et cunctum populum Recog. for  
suum, et præcipue erga I.B. de, &c. sc. quod ipse non inferet, nec inferri pro- the Peace.  
curabit, per se nec per alios, dampnum aliquod seu gravamen præfato I.B. seu  
alicui de populo ipsius Dom' Regis, de corporibus suis per insidias, insultus, seu  
aliquo alio modo, quod in lationem seu perturbationem Pacis dicti Dom' Regis  
cedere valeat quovis modo, viz. uterque præd' H.C. et I.S. sub pæna cent' li- Lib. Intr.  
brar', et præd' R.G. sub pæna ducent' librar. Quas quidem separales summas 463.  
cent' librar' uterque præd' H.C. et I.S. (ut prædicitur) per se, ac præd' R.G.  
præd'

*prad' summam ducent' librar', recognoverunt se debere dicto Dom' Regi, de terris et tenem', bonis et catallis suis, et quorumlibet ac cuiuslibet eorum, ad opus ipsius dicti Dom' Regis fieri et levari, si contingat prefat' R.G. in aliquo pramissor' deficere, et inde legitimo modo convinci. Dat. &c.*

Or thus for the Good Behaviour.

**M**emorand' quod 10 die mensis Julii, anno regni Caroli, &c. N. G. de, <sup>Canab.</sup> &c. in propria persona sua venit coram nobis Isaaco Barrow et Roberto Haggar Armigeris, Fust' dicti Dom' Regis ad Pacem in dicto Com' conservand' assign', et assumpsit pro seipso sub pœna 200 l. et H.C. et I.S. de eisdem Villa et Com' Husbandamen, tunc et ibidem in propriis personis suis similiter venerunt, et manuceperunt pro prefato N.G. viz. uterque eorum separatim sub pœnacent' librar', quod idem N.G. personaliter comparebit coram Fust' dicti Dom' Regis ad Pacem, &c. ad prox' general' Session' Pacis in Com' prad. tenend', ad faciend' et recipiend' quodei per Cur' tunc et ibidem injungetur: Et quod ipse interim se bene geret erga Dom' Regem et cunctum populum suum, et precipue erga I.B. de C, &c. sc. quod ipse non inferet, nec inferri procurabit, per se nec per alios, damnum aliquod seu gravamen prefato I.B. seu alicui de populo ipsius Dom' Regis, de corporibus suis per insidias, insultus, seu aliquo alio modo, quod in lesionem seu perturbationem Pacis dicti Dom' Regis cedere valeat quovis modo. Quas quidem separales summas, &c. ut supra.

Or by a Recognizance, with this Condition subscribed or indorsed.

**T**He Condition of this Recognizance is such, That if the above bounden R.G. shall personally appear before the Justices of our Sovereign Lord the King at the next general Sessions of the Peace to be holden in the County of C, to do and receive that which by the Court shall be then and there enjoined him, and that in the mean time he be of Good Behaviour, and do keep the Peace of our said Sovereign Lord the King, towards His Majesty and all his liege people, that then, &c.

Or thus.

**C**onditio Recognitionis prad' talis est, Quod si prad' N.G. imposter' se bene geret, et Pacem Dom' Regis conservabit erga dict. Dom. Regem, et cunctum populum suum, quod tunc Recognitio prad. pro nullo teneatur, alioquin in suo robore permaneat.

Or thus.

Lam. 125.  
Lib. Intr.  
454.

**C**onditio Recogn. prad. talis est, Quod si prad' R.G. imposterum se bene geret, et Pacem Dom. Regis conservabit erga dict. Dom. Regem, et cunctum populum suum, et precipue erga I.B. de, &c. et nullum damnum corporale, nec aliquid quod in lesionem Pacis Dom. Regis cedere valeat, prefato I.B. seu alicui de populo ipsius Dom. Regis, faciet quoquo modo, extunc Recognitio prad. pro nullo teneatur, alioquin in suo robore permaneat.

33 H. 8. c.  
39.

Note, that all Bonds, Obligations and Recognizances that shall be taken by any Justice of Peace (or any other person) for any cause touching the King, must be made and taken in his name, and by these words, *Domino Regi, &c.* See hereof antea, tit. Surety for the Peace, and Recognizances.



Also note that the Recognizance runneth, *De terris & tenementis, habitis & catallis, &c. fieri & levare, &c.* And yet the King may be at his election, to take the Execution of the Bodies of the Recognizors, (as well of the Principal as of the Sureties) or of their Lands and Chartels, (for the sum in the Recognizance contained.) *Per Curiam 7 Hen. 4. 34. a. Vide antea, tit. Surety for the Peace.*

And it seemeth by the Common Law, before the Statute of 33 H. 8. 39. in all cases where a man is a Debtor to the King, as well his Body as his Lands and Goods are liable to the Kings Execution: For *Thesaurus Regis est Pacis vinculum, et Bellorum nervi*: And therefore the Law doth give to the King full remedy for it. See Coke 3. 12. b. et Coke 11. 93. a.

A Recognizance to give in Evidence against a Prisoner.

Cantab.

**M**emorandum, quod 20 die Martii, anno regni Domini nostri Caroli, Dei gratia, Angliæ, Scotiæ, Franciæ et Hiberniæ Regis, Fidei Defens. decimo, &c. R. T. de, C. in Com. præd. Yeoman, venit coram me Ro. Th. Armig. uno Justic. dict. Dom. Reg. ad Pacem in Com. prædict. conservand. assignat. et cognovit se debere dicto Domino Regi quinque libr. legalis monete Angliæ, sub conditione, quod si ipse personaliter comparebit coram Just. dicti Dom. Regis ad proximam generalem Gaolam delib. in Com. præd. tenend. ad tunc et ibid. ostendendum in Evidenc. secundum formam Stat. vers. D.F. nuper de W. in Com. præd. qui modo attach. et suspect. Felonie Gaolæ dicti Dom. Regis Com. præd. commissus existit; quod tunc &c. aliquin, &c.

Or this may be done by a single Recognizance, with a Condition endorsed, as followeth.

*A Condition to prefer a Bill of Indictment, and to give in Evidence against a Prisoner.*

**T**He Condition of this Recognizance is such; That whereas one *A.B.* of *G.* Labourer, was this present day brought before the said Justice by the within bounden *D.E.* and was by him charged with the Felonious taking of twenty sheep of the goods of him the said *D.* and thereupon was sent by the said Justice to the Kings Majesties Gaol: If therefore he the said *D.E.* shall and do at the next general Gaol-delivery (to be holden in the said County) prefer, or cause to be framed and preferred, one Bill of Indictment of the said Felony against the said *A. B.* and shall then also give Evidence there concerning the same, as well to the Jurors that shall then inquire of the said Felony, as also to them that shall pass upon the Trial of the said *A.B.* that then, &c. or else to stand in full force for the King.

*Or thus, to give in Evidence.*

**T**He Condition of, &c. That if the above-bounden *D.E.* do at the next general Sessions, &c. pursue and give such Evidence as he knoweth against *A.B.* now Prisoner in the Castle of *C.* concerning certain Felonious acts by him committed: then, &c.

*A Condition to appear before the Justices of Peace at their next Sessions.*

**C**onditio istius Obligationis talis est; Quod si A.W. de, &c. Spinster, in propria persona sua compareat coram Justic. Domini Regis de Pace in Cam. C. conservand. assign. (necnon ad, &c.) ad prox. Sessionem Pacis dicti Domini Regis in Com. prad. tenend. ad respondend. tam dicto Domino Regi quam G.S. de Placito Transgressionis et Contemptus, contra formam Statuti, quod tunc presens Obligatio vacua et pro nullo habeat. et si pradiet. A. contra premissa seu eorum aliquod in futur. fecerit, quod tunc presens Obligatio in omni suo robore stet et effectu.

*Or thus.*

**T**He Condition of this Recognizance is such; That if the within-bounden A.W. shall make his personal appearance before the Kings Majesties Justices of the Peace at the next Quarter Sessions of the Peace to be holden for the said County of Cambridge, then and there to make answer unto such matters as on his Majesties behalf shall be objected against him (by A.B. of, &c. or concerning &c.) and there shew the matter shortly, and shall also stand to and abide such farther Order as the said Court shall award or set down therein; that then and from thenceforth this present Recognizance shall be frustrate and made void, or else to remain in his full force, strength, and virtue.

*Another for him that hath dangerously hurt one.*

**T**He Condition of this Recognizance is such; That whereas the within bound R.W. hath now lately dangerously hurt one I.T. of F. within the said County of Cambridge, Yeoman, giving him divers blows on the head, face, and left side with a Bill, so as the said I.T. is in danger of death thereby: If therefore the said R.W. shall make his personal appearance before the Kings Majesties Justices at the next general Gaol-delivery to be holden in the said County of, &c. then and there to make answer unto the Premises, and to do and receive that which by the Court shall be then and there enjoined him, and that he the said R.W. in the mean time to keep the Peace of our said Sovereign Lord the King, towards the Kings Majesty and all his liege people, that then, &c.

*A Condition for Ale-house-keepers.*

**T**He Condition of this Recognizance is such: Whereas the within-bounden A.B. is admitted and allowed by the within-named Sir I. Reynolds and Michael Dalton Esquires, (two of the Kings Majesties Justices of Peace within the County of Cambridge within written) to keep a common Ale-house or Tippling-house, and to use common selling of Ale or Beer, onely within the now house of him the said A.B. (and not elsewhere) situate in the High-street of the Town of M. within written, and called the sign of the Hart: If therefore he the said A.B. during such time as he shall keep such common Ale-house there, shall not suffer any unlawful play at the Tables, Dice, Cards, Tennis, Bowls, Closh, Quoits, Loggets, or other unlawful Games to be used in his said house, or in his Garden, Orchard, or other his ground or place, (especially

*This or the like Form hath heretofore been allowable.*

ally by mens Servants, Apprentices, common Labourers, or idle persons) nor dress, or cause or suffer to be dressed, any Flesh to be eaten upon any day forbidden by the Laws and Statutes of this Realm of *England*; nor wittingly and willingly admit or receive into his said house, or any part thereof, any person notoriously defamed of or for Theft, Incontinency, or Drunkenness, or that shall be before hand notified to him the said *A.B.* by the Constable of *M.* aforesaid, for the time being, or by his Deputy, to be an unmeet person to be received into a common Ale-house; nor shall keep or lodge there any strange person above the space of one day and one night together, without notice thereof first given to the Constable or his Deputy there; and finally if he the said *A.B.* during all the time that he shall keep common selling of Ale or Beer in the said house, shall and do there use and maintain good order or rule: then this present Recognizance to be void, &c. or else, &c.

Or where the Justices of Peace at their meeting take divers such Recognizances, they were made shortly, as followeth.

**M***Emorand. quòd. 1 die Aprilis, an. regni Dom. nostri Caroli, &c. coram nobis Ed. Peyton Milite & Baronet. & H.V. Armig. duobus Justiciar. &c. venerunt A.B. de New-market in Com. pradi. Victualler, & cognovit se debere dicto Dom. Regi 10. li. & C.D. de, &c. & E.F. de, &c. uterque eorum recognovit se debere dicto Domino Regi 5 li. bona & legalis moneta Angl<sup>i</sup>, de bonis et catallis terris et tenem. suis fieri et levare, ad opus, &c. si defecerit in Conditione sequente.*

The Condition of this Recognizance is such; That if, &c. (and write the Condition at large.)

*G.H. de New-market in Com. pradi. Victuallar, et cognovit se debere dicto Dom. Reg. x. li. et I.K. de, &c. et L.M. de, &c. uterque eorum recog. se debere dicto Domino Regi v. li. &c.*

*Sub Conditione, ut supra.*

*N.O. de New-market in Com. pradi. Victualler, et cognovit se debere dicto Dom. Regi x. li. Et P.Q. de, &c. et R.S. de, &c. uterque eorum recog. se debere dicto Domino Regi v. li. &c.*

*Sub Conditione, ut supra.*

*T.F. de Soham in Com. pradi. Victualler, et cognovit se debere dict. Dom. Regi x. li. Et W.W. de, &c. et I. S. de, &c. uterque eorum recog. se debere dicto Domino Regi v. li. &c.*

*Sub Conditione, ut supra*

*Et sic de ceteris.*

For the matter of this Condition for Ale-house-keepers, it is (by the Statute) partly referred to the discretions of such Justices of Peace as take such Recognizance or Bond, as you may see before it, *tit. Ale-houses.*

And in some Shires the Justices of Peace did condescend, and agree upon certain Articles framed by their discretions, and generally to be propounded to all common Ale-sellers, taking their Bond for the performance of the same Articles; a Copy whereof they did use to deliver to every of them: which manner was avowable also.

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Amongst Articles of this kind I did commend to the Justices care these three especially.

First, That no Ale-house-keeper upon the Sabbath day should receive or suffer to remain any person whatsoever (as their Guests) in any their houses, or other places, to tipple, eat, or drink; other then Travellers, and such as come upon necessary business.

Secondly, That they suffer no person whatsoever, resorting to their houses, onely to eat or drink, to remain to be there after nine of the clock in the evening, from *Michaelmas* till *Lady-day*; or from *Lady-day* till *Michaelmas*, after ten of the clock at night.

Thirdly, That they suffer no person, resorting to their houses, onely to eat and drink, to remain tippling there above one hour, other then Travellers.

But note, that now there be divers Articles of far better directions, published (touching Ale-houses) by Proclamation given by the Kings Majesty at *New-market*, the 19 day of *January*, in the 16 year of his Majesties Reign of Great Britain, France and Ireland, Anno Dom. 1618. in manner and form following.

I. That the Justices of Peace of every County, City, or Town Corporate within this Kingdom, and the Dominion of *Wales*, do once every year, in the Moneths of *April* and *May*, assemble themselves, either at a special Sessions, or such other Meeting as they shall appoint for that purpose, (respecting the ease and convenience of the people of the County) and there call before them, or any two of them, (whereof one to be of the *Quorum*) all such persons as do sell Ale or Beer by retail in any place (as well within Liberties as without) within such County, City, or Town Corporate; and then and there to take true Certificate and information from men of trust, who be persons of honest conversation, and who not; and to give Licence to such persons as they in their discretions shall think meet to keep common Ale-houses, or Victualling-houses, within the places where such persons shall dwell.

II. That in the licensing of the said Victuallers and Ale-house-keepers, the form of the Recognizance hereafter following, and the Condition thereunto annexed, be used, and none other.

*Memorand. quod 20 die Febr. anno regni Domini nostri Caroli, Dei gratia, Angliæ, Scotiæ, Franciæ, et Hiberniæ Regis, Fidei Defensoris, &c. coram T.P. et H.D. Armiger. Justiciar. dicti Domini Regis ad Pacem in Comitatu predict. conservand. assignat. &c. A.B. de, &c. et C.D. de, &c. manuceperunt pro W. St. de, &c. Victualler, viz. uterque Manu capt. predict. sub pena quinque librar. et predict. W. St. assumpsit pro seipso sub pena 10 li. quas concesserunt se debere dicto Dom. Regi, &c. sub Condit. seq.*

THE Condition of this Recognizance is such; That whereas the above (or within) bounden *A.B.* is admitted and allowed by the said Justices to keep a common Ale-house and Victualling-house until the first of *April*, (or for the space of one whole year next ensuing the date hereof) and no longer, in the house where he now dwelleth, at *C.* in the County of *S.* and not elsewhere in the said County: If therefore the said *A.B.* shall not, during the time aforesaid, permit or suffer, or have any playing at Dice, Cards, Tables, Quoits, Loggets, Bowls, or any other unlawful Game or Games, in his house, yard, garden, or back-side; nor shall suffer to be or remain in his house any person or persons (not being his ordinary household Servants) upon any Sabbath-day or Holy-day,

day, during the time of divine Service or Sermon; nor shall suffer any person to lodge or stay in his house above one day and one night, but such whose true name and surname he shall deliver to some one of the Constables, or in his absence to some one of the Officers of the same Parish the next day following, (unless they be such person and persons as he or she very well knoweth, and will answer for his or their forthcoming;) nor suffer any person to remain in his or her house tippling or drinking contrary to the Law, nor yet to be there tipping or drinking after nine of the clock in the night-time; nor buy or take to pawn any stolen Goods, nor willingly harbour in his said house, or in his Barns, Stables, or elsewhere, any Rogues, Vagabonds, sturdy Beggars, Masterless-men, or other notorious Offenders whatsoever; nor suffer any person or persons to sell or utter any Beer or Ale, or other Victual, by deputation, or by colour of his or her License: and also, if he shall keep the true assize and measure in his Pots, Bread, and otherwise, in his uttering of his Ale, Beer and Bread, and the same Beer and Ale sell by sealed Measure, and according to the Assize, and not otherwise; and shall not utter or sell any strong Beer or strong Ale above a penny the quart, and small Beer or small Ale above a half-penny the quart, and so after the same rates; and also shall not utter, nor willingly suffer to be uttered, drunk, taken, or tipped any Tobacco within his said house, Shop, Cellar, or other place thereunto belonging: That then, &c.

‘Note, that the whole Sabbath-day being holy, tippling at the Ale-house at any time of the day must needs be a profanation of the day; and therefore meet to be inserted into this condition.

3. That every Alehouse-keeper and Victualler, so to be licensed, do enter into Recognizance with two able Sureties, to be bound in 5 *li.* a-piece, and the principal 10 *li.* at the least, for the performance of the Condition of the said Recognizance, which shall endure but for one whole year, and then determine, unless it shall seem fit to the Justice of Peace to renew the same again, by taking a new Recognizance of the same Condition: and whatsoever date the Recognizance shall have, it is to endure but until the said moneths of *April* and *May*, or one of them.

5. That the Clerks of the Peace, Town-clerks, or their Deputies respectively, be called to attend the Justices of Peace at such their Meetings or Assemblies; and that they do there take the Recognizance aforesaid of every Victualler or Ale-house-keeper licensed, and do duly enter them amongst the Records of the Sessions of the Peace in their charge, whereby his Majesty may be duly answered of the Forfeitures that shall be made of the parties so bound.

5. That the Clerks of the Peace, and Town-clerks aforesaid, or their Deputies, shall, within some convenient time after the taking of the said Recognizance, fairly engross the Recognizance and Condition in Parchment, which they shall keep as the Original, and send a true Copy of the said Recognizance, examined with the said Original, to every Alehouse-keeper allowed, whereby he may the better inform himself what he and his Sureties are bound to observe.

6. That the Clerks of the Peace, and Town-clerks, or their Deputies, do write out, and bring with them to every Sessions of the Peace, or other meeting of the Justices, a Register-book containing the true names, surnames, and places where every Ale-house-keeper or Victualler that is licensed doth dwell, to the end it may appear to the Justices of the Peace who be licensed, and by whom, and who be not, and what other alterations have been from time to time, for the placing of men of  
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honest and good conversation, and displacing of others of ill behaviour.

7. That the Clerks of the Peace, and Town-clerks, and their Deputies, may take of every Ale-house-keeper for their Fee, for performing of the Services aforesaid, at the time of the acknowledgement of the said Recognizance, the Fee of 18*s*. and no more, over and above the Fee of 12*s*. allowed for the Justices Clerks by the Statute, which shall be paid to the said Justices Clerks.

8. That in case the Ale-house-keeper, not knowing of the Justices meeting, or being hindred by sickness, or other such like impediment, shall fail of admittance at the general or publick Assemblies, and shall notwithstanding be admitted or licensed by two Justices of the Peace, (whereof one to be of the *Quorum*) the Recognizance with Condition fair engrossed in parchment in the form prescribed, as aforesaid, shall forthwith, or at the next Sessions at the farthest, be returned to the Clerks of the Peace, or the Town-clerks respectively, under the hands of the Justices before whom such Recognizance was taken, together also with the said Fee of eighteen pence for the Entering, Registering, making and delivering of a Copy under his hand to the Ale-house-keeper, as aforesaid.

9. That none be licensed or allowed to keep an Ale-house that hath not one convenient lodging at least in his or their houses, for the lodging of any Passenger or Traveller, and hath not always in her or their house good and wholsome small Beer or Ale, of two quarts for a penny, for the relief of the Labourer, Traveller, or others that call for the same.

10. That the Justices of Peace within their several Precincts do not permit or suffer any unlicensed Ale-house-keeper or Victualler to sell Beer or Ale, but that they proceed against them by all due and lawfull means whatsoever; and that they be very careful, from time to time, to cause the Brewers to be proceeded against in their General and Quarter Sessions, for delivering Beer or Ale to such unlicensed persons, according to the Statute in that case provided.

11. That the Clerks of the Peace, or Town-clerks respectively, do once every year, in *Trinity* Term, make and bring in a Brief of all such Recognizances as shall be taken within every County, City and Town Corporate, into the Office of the Patentees, (appointed by them for that purpose) to the end all concealments of Recognizances taken in that behalf may be discovered, and the benefit accruing to his Majesty by such as wilfully break the same may be more duly prosecuted; of which that his Highness be not defrauded, order is given to the Patentees, that with the allowance of the chief Justice of the Kings Bench there be appointed Committees in every County for the recovery thereof from time to time.

12. That the Justices of Assize in their Circuits, and Justices of Peace at their general Sessions of the Peace, do from time to time, enquire of the due execution of these presents, and of all other abuses, disorders, and misdemeanors whatsoever, committed or suffered against the provisions aforesaid, and the true meaning of them.

And yet the means (as I conceive) to reduce them both to a more competent number, and to better order, would be by a Law to be made by Statute, that none should be licensed to keep any Ale-house, unless they did find two good and sufficient Sureties (one of them at least to be a subsidy-man) to be bound for performance of the Condition of their said Recognizance.



*A Licence to keep an Alehouse.* CHAP. CLXXVII. V. 124.

Cambr.

**J**ohn Cutts Knight and Michael Dalton Esq; two Justices of the Peace of our Sovereign Lord the Kings Majesty in his Highnesses County of C, send Greeting in our Lord God everlasting. Know ye, that we the said Justices, of good and credible report to us made by divers credible and honest persons, &c. that *I.W.* of, &c. is a man meet to keep a common Ale-house in the house where he now dwelleth, Have licenced, allowed, and admitted, and by these presents do license, allow, and admit the said *I.W.* to keep a common Ale-house or Tippling-house at *L.* for one whole year next ensuing the date hereof, so that the said *I.W.* suffer not any unlawful Games to be used in his said house, nor any evil rule or order to be kept within the same, during the time of his said Licence: for the using of which Licence accordingly, we do you to wit, that we have bound the said *I.W.* in 10 *li.* and two other sufficient Sureties in an hundred shillings apiece by Recognizance to the Kings Majesties use. In witness whereof we have hereunto set our hands and seals. Dated, &c.

Or thus.

Cambr.

**J.C.** and **M.D.** two Justices of the Peace of our Sovereign Lord, &c. to all Bailiffs, Constables, and other the Kings Majesties Officers, Greeting. Know ye, that we the said Justices have licenced, and by these presents do license *I.W.* of, &c. to keep a common Alehouse in *L.* afore-said for one whole year next ensuing the date hereof, and have bound the said *I.W.* by Recognizance with Sureties to the Kings Majesties use, that he shall maintain good rule, and farther to do and behave himself therein in all things according to the Laws and Statutes of this Realm, &c.

Or thus.

Cambr.

**W**E whose names are here-under written, Justices of the Peace of our Sovereign Lord the King within the County of Cambridge, do Licence and allow *I.W.* of *L.* in the said County to keep a common Ale-house or Tippling-house in *L.* afore-said, for and during one whole year next ensuing the date hereof, so as he doth not suffer any unlawful Games to be used in his house, nor any evil rule to be kept there, but doth behave himself therein according to the Laws and Statutes of this Realm in that behalf made and provided. In witness, &c.

*A Licence to Brew and keep an Ale-house.*

Cambr.

**W**hereas *A.M.* of *W.* in the County of C. Husbandman, hath come before us, *Fohn Cutts* Knight, and *Tho. Chicheley* Esquire, two of the Kings Majesties Justices of Peace within the said County, and bound himself in a Recognizance with sufficient Sureties, to brew and sell, and keep a common Ale-house, according to the Statute made in the fifth year of the Reign of our late Sovereign Lord King *Edward 6.* Now know ye us, the said *Fohn Cutts* and *Thomas Chicheley*, to have licenced the said *A.M.* to Brew, to sell, and keep a common Ale-house according to the said Statute. Given under our hands the 13 of *July* in the, &c.

West. 554

*A Licence for a Recusant to travel, &c.*

**W**Hereas *R.C.* of *L.* in the County of *C.* being a Recusant (con-<sup>Cambr.</sup> victed) hath confined himself to *L.* aforefaid, being the usual place of his abode, according to the Statute made in the 35 year of the Reign of our late Sovereign Lady Queen *Eliz.* know ye, that we, &c. four of the Kings Majesties Justices of the Peace within the said County, do, by the consent of the right reverend Father in God, *Nicholas* by Gods Providence Lord Bishop of *Ely*, at the request of the said *R.C.* for the dispatch of his urgent and necessary business, grant and give Licence to the said *R.C.* to travel out of the Precincts or compass of five miles limited by the same Statute, at all times untill the first day of *November* next coming, and at the first day of *November* to return again to *L.* aforefaid. In witness, &c. See *hic antea, tit. Recusants.*

*A Testimonial or Pass-port to Travel.*

**S**IR *Roger Millisent* Knight, and Sir *James Reynolds* Knight, two of the <sup>Cambr.</sup> Kings Majesties Justices of Peace within the said County, to all Justices of Peace, Mayors, Bailiffs, Constables, and all other his Majesties Officers and Ministers whatsoever, send Greeting in our Lord God everlasting. Forasmuch as the Bearer hereof *E.P.* (*here shew the cause of his travel*) hath desired our Testimonial (or Licence) for his safe travel unto the City of *B.* where (*here shew whither he is to goe* :) In consideration thereof, know ye, we the said Sir *Roger Millisent* and Sir *James Reynolds* so far as in us lieth, have licensed the said *E.P.* to pass and travel the direct way from *H.* within the said County of *C.* whereas he lately dwelled, unto the said City of *B.* so as his journey be not of longer or farther continuance then twenty days next after the date hereof; praying you and every of you not to molest or trouble the said poor man in his travel, but to permit and suffer him peaceably to pass so as he shew himself in no respect offensive to his Majesties Laws. In witness, &c.

But upon such Licence, the persons thus licensed to travel may neither beg, nor wander idely, nor out of their direct way. Besides, the Justices must be sparing to grant such Licences, except in cases of necessity. For except the persons so licensed be one that hath suffered Shipwreck, or a Souldier, or Mariner coming from the Seas, &c. *hic cap.* or be a Labourer, and onely for Hay and Harvest-time, or else be a Servant departing from his Master, *hic cap.* the Justices of Peace are to make no such Licence or Testimonial, (as it seemeth.) And as for the manner of such Testimonial or Licence for the persons suffering Shipwreck, and Souldiers coming from Sea, and in what manner such persons may travel, see *hic antea, tit. Rogues.*

But in other cases where any person shall become poor, lame, blind, or otherwise diseased, or decayed, and shall have just cause to travel, they must be provided of mony or maintenance for their travel; otherwise the Justices ought to forbear to grant any such Licence, and must rather cause them to be sent to, and settled in, the Town where they last dwelt.

Also it is fit that such person do get the allowance of such his Pass-port under the hand of a Justice of Peace in every County where he is to pass.

*The form of a Testimonial for the conveying of a Rogue that hath been punished according to the Statute of 39 El. c. 4.*

*Cambr.*

**J**ohn a-Stile, a sturdy vagrant Begger, (of low personage, red-haired, having the nail of his right thumb cloven) aged about 25 years, was this sixth day of *April*, in the tenth year of the Reign of our Sovereign Lord King *Charles*, of *England*, &c. openly whipped at *W.* in the said County (according to the Law) for a wandering Rogue, and is assigned to pass forthwith from Parish to Parish by the Officers thereof, the next straight way to *P.* in the County of *W.* where (as he confesseth) he was born, (or dwelled last by one whole year, &c. if the case be such) and he is limited to be at *P.* aforesaid within ten days now next ensuing, at his peril. Given at *West-wrattin*, under the hand and seal of *M.D.* Esquire, one of his Majesties Justices of Peace in the said County of *Cambridge*.

Note, by the words of the Statute 39 *El.* 4. such Testimonial must be under the hand and seal of the Justice of Peace, Constable, Headborough, and of the Minister of the Parish, or any one of them; and yet it is taken that the Justice of Peace alone under his hand and seal may make such Testimonial. *Lamb.* 206.

Note also, that it is needful both in this and in all other Testimonials, Certificates, Safe-conducts, and Pass-ports whatsoever, to note and specify expressly some assured marks of the party, as his Stature, colour of Hair, Complexion, or (if it may be) some apparent scar, or other note, by which he may be infallibly distinguished and known from others; lest (as is often found) both himself take the benefit thereof, and he also communicate the use of the same to others, in abuse of him that made it, and of the Law in that behalf provided.

*A Testimonial for such as have suffered Shipwreck.*

*Norff.*

**A.B.** of *C.* in the county of *Norff.* Esquire, one of the Kings Majesties Justices, &c. to all, &c. Forasmuch as the Bearer hereof *I.S.* aged abouts &c. having lately been at Sea, in a Ship called, &c. hath suffered Shipwreck, and got to land at *T.* in the said County of *Norff.* upon the 20 day of *July* last past, (as I am credibly informed, as well by the report of the said *I.S.* as also by the testimony of divers the Inhabitants of *T.* aforesaid) and for that the said *I.S.* hath not wherewith to relieve himself in his travel homeward to *D.* in the County of *H.* where he saith he was born, (or hath a dwelling, &c.) These are therefore to pray you, and every of you, to whom these presents shall come, not to molest or trouble the said *I.S.* in his travel to *D.* aforesaid, where he is limited to be within 20 days next after the date hereof; but to desire you rather to relieve him in his necessity, as to you shall seem meet: and withall, you the Constables of every Town where he shall come, to help him with lodging in convenient time, so that he travelleth the direct way to *D.* aforesaid, not doing any thing contrary to the Laws and Statutes of this Realm. In witness whereof, &c.

*Mariner  
or Souldier.*

The like (with very little alteration) may be for a poor Mariner, or a poor Souldier, coming from the Seas, or from beyond the Sea. *Vide antea, tit. Rogues.*

But these two last Testimonials must be made by some Justice of Peace dwelling near where such persons do land.

*Wat.*



## Warrants. CHAP. CLXXXVIII. V. 125.

Warrant. custodi Gaolæ, ad recipiend. Prisonarium pro Felonia.

**E**dwardus Peyton Miles & Baronettus, armis Jusfic. Domini Regis nunc Cambr.  
Ad Pacem in Com. præd. conservand. necnon ad divers. Felon. Transgr. &  
alia malefact. in eodem Com. audiend. & terminand. assign. Custodi Gaola dict.  
Dom. Regis in Com. præd. aut ejus locum tenenti, & eor. cuilibet, salut. Quia  
R.T. nuper de I. in Com. præd. Labourer, jam pro suspitione ejusd. Felon.  
per ipsum (ut dicitur) perpetrat. per Constab. Villa de R. in Com. præd. arre-  
stat. Ideo ex parte dicti Dom. Regis vobis & cuilibet vestrum præcipio, quod  
ipsum R. in custod. vestram recipiatis, seu unus vestrum recipiat, ibidem mora-  
tur: quousque secundum Legem & consuetudinem regni Angliæ a custod. vestra  
delibaretur. Dat. apud Isleham, &c.

Alias:

*I.D.&c.* to the Keeper of the Kings Majesties Gaol at the Castle of  
Cambridge, or to his Deputy there, Greeting: These are in His Majesties  
Name to charge and command you, that you receive into your said Gaol  
the body of *R.S.* late of, &c. taken by *F.C.* and *I.S.* Constables of the  
Town of *W.* and by them brought before me for suspicion of Felony, &c.  
and that you safely keep the said *R.S.* in your said Gaol until the next  
general Gaol-delivery for the said County, [if he be not bailable; or if  
he be bailable, then thus] until he shall be thence delivered by due or-  
der of His Majesties Laws. And hereof fail you not, &c.

*A Mittimus of a Felon after his Examination taken.*

**J**ohn Cotton Knight, one of the Justices, &c. to the Keeper of His Ma-  
jesties Gaol at the Castle of Cambridge in the said County, &c. Greeting.  
I send you herewithall the body of *A.B.* late of C. Labourer,  
brought before me this present day, and charged with the Felonious tak-  
ing of twenty Sheep, (which also he hath \* confessed upon his Exami-  
nation before me:) and therefore these are (on the behalf of our said  
Sovereign Lord) to command you, that immediately you receive the  
said *A.B.* and him safely keep in your said Gaol, until that he shall be  
thence delivered by the due order of his Majesties Laws. Hereof fail  
you not, as you will answer for your contempt at your peril. Given at  
Chevely the first day of Decemb. in the 20 year of the Reign of our said  
Sovereign Lord Charles, by the grace of God, King of England, Scotland,  
France and Ireland, Defender of the Faith, &c.

\* But this  
clause maketh the  
Prisoner  
not to be  
bailable.

Alias.

Or these Warrants or *Mittimus*, whereby a Prisoner shall be sent to  
the Gaol, may be made in the Kings name, and the *Teste* may be made  
under the name of the Justice of Peace as followeth.

**C**AROLUS Dei grat. Rex Angl. &c. Cust. Gaole nostræ de Cantab.  
vel ejus locum tenentis salut. Quia *R.S.* nuper de B. in Com. Essex. La-  
bourer, jam pro suspic. ejusd. Felonia per ipsum, ut dicitur, perpetrat.  
arrest. Ideo vobis & cuilibet vestr. præcipimus, quod ipsum R. in custod. vestram  
Ggg Ga.

*Gaola nostra predict. recipiatis, seu unus vestrum recipiat, ibidem moratur. quousque secundum Legem regni nostri Angliæ à custodia vestra deliberetur. Teste Edw. P. &c.*

*A Mittimus to send to the Gaol an Ale-house-keeper that victualleth contrary to commandment, &c.*

*Cambr.*

*H.E.* and *R.T.* Esquires, two of the Kings Majesties Justices of the Peace within the said County of *Cambridge*, to the Keeper of the Kings Majesties Gaol at *C.* Greeting. Whereas *R.D.* of *B.* in the said County of *Cambridge* (upon complaint lately made unto us of the evil rule kept and suffered by him in his house, and other misdemeanors) by Warrant under both our hands and seals was discharged of his Ale-house-keeping, and was commanded from us that he should thenceforth use no more common selling of Ale or Beer; and whereas we are credibly informed that the said *R.D.* (notwithstanding our said Warrant and commandment given him to the contrary, as aforesaid) hath ever since obstinately, and upon his own authority, taken upon him to\* keep a common Ale-house or Tippling-house, and still continueth the same: We do therefore send you herewithall the body of him the said *R.D.* commanding you in His said Majesties Name to receive him into your said Gaol, and there safely to keep him, untill such time as he shall be from thence delivered by due order of Law. And hereof fail you not at your perils. Dated at, &c.

\* Or to use commonly selling of Ale or Beer.

*Or thus.*

**W**Hereas by Warrant or commandment from divers Justices of Peace of this County. *I.S.* of, &c. hath been suppressed for keeping an Ale-house, &c. and forasmuch as complaint hath notwithstanding been made to us (this present day) that the said *I.S.* hath and doth, contrary to the said commandment, and contrary to the Statute in that behalf provided, still keep a common Ale-house: Therefore we do send you herewithall the body of the said *I.S.* commanding you, &c. to receive the said *I.S.* into his Majesties Gaol, and there safely to keep him for three days without Bail or Mainprise; and afterwards untill he shall with two Sureties enter into Recognizance, that he shall not keep any common Ale-house, or use common selling of Ale or Beer, and pay his Fine of 20 s. according to the Statute in that case made and provided. Hereof fail you not, &c.

*A Mittimus (to the Gaol) of the reputed father of a Bastard-child, &c.*

*Cambr.*

**I** Send you herewithall the body of *R.C.* of *B.* in the County of *C.* Labourer, brought before me this present day, and charged by *F.S.* of the same Town to have gotten her with Child: And for that the said *R.* refuseth to put in Security for his appearance at the next Quarter-Sessions, and to the end he may be forth-coming whenas order shall be taken for the relief and discharging of the said Town of *B.* and for the keeping of the said Child (when it shall happen to be born) according to the Statute in that case provided; these are therefore on the Kings Majesties behalf to charge and command you, that immediately you receive the said *R.C.* and him safely keep in your said Gaol, untill such time as he shall be from thence delivered by due order of Law. And hereof fail you not as you will answer your contempt at your peril. Dated, &c. In

In every *Mittimus* the cause of the Commitment is to be set down, to the end it may appear whether the Prisoner beailable or no. See hereof before in the title *Bailment*, &c.

Also where the Justices of Peace out of their Sessions may hear and determine, and so may commit Offenders for the Offence or Fine, it is necessary that in their *Mittimus* there be contained the manner of the Offence, and how long time the Offender is to be kept in prison for it. See the *Mittimus* for Guns afterwards.

*A Mittimus to the House of Correction, of a dangerous Rogue.*

*I.R.* Knight and *Michael Dalton* Esquire, two of the Kings Majesties Justices of the Peace within the said County of *Cambridge*, to the Master or Governour of the House of Correction at *Bottisbam*, (for the East side of the said County) or to his Deputy there, Greeting. Whereas *I.S.*, a sturdy vagrant Begger, was this 20 day of *September*, *Anno Dom.* 1620 brought before us, and charged as well with begging and idle wandring abroad, as also with other lewd and disorderly behaviour, so as he appeareth to us to be dangerous to the inferior sort of people, (or such a one as will not be reformed of his roguish life) contrary to his Majesties Laws in such behalf provided: These are therefore to will and require you to receive the said *I.S.*, and him safely keep in your said House, untill the next Quarter Sessions to be holden in the said County; and during all that time (that he shall continue with you) that you hold him to work and labour, and punish him by putting Fetters and Gyves upon him, and by moderate Whipping him, as in good discretion you shall find cause, yielding him for his maintenance only so much as he shall deserve or earn by his labour and work; and that at the said next Quarter Sessions you have the said *I.S.* there, together with this our Warrant. And hereof see that you fail not, &c. Dated, &c.

See  
Stat. 7.  
Jac. c. 4 &  
39 Elc. 4.

*Or such  
rogue may  
be sent to  
the Gaol.  
See before  
tit. Rogues.*

*A Mittimus to the House of Correction of a disorderly Servant,  
or other disorderly person.*

I Have sent you herewithall the body of *E.C.* of *W.* in the said County of *C.*, being an idle, dissolute, and disorderly fellow: (or one that will not keep his service nor follow any honest course of life.) These are therefore to will and require you to receive the said *E.C.*, and him safely to keep, (\* untill that he shall be thence delivered by Warrant from myself, or some other His Majesties Justice of Peace for this County of *Cambridge*) and in the mean time to hold him to work, and to punish him by moderate Whipping, and otherwise, according to the Law in such cases provided. And hereof see that you fail not at your peril. Dated, &c. See the Statute 7 *Jas. cap. 4.*

*Cambr.*

\* Or, by  
the space of  
three days  
next after  
the date of  
this Warrant.

*Another for one that runneth away, leaving her charge to the Town.*

WE have sent you herewithall the body of *I.R.* of *W.*, single Woman, being lately delivered of a Child, and one that is able to labour, and thereby to relieve her self and her Child, and hath notwithstanding lately run her way, and left her Child upon the Parish, to the charge of the same Parish, contrary to the Statute in that behalf provided: These are therefore to will and require you to receive the said *I.R.*, and her safely to keep, untill the next

*Cambr.*



Or else such  
party must  
be deliver-  
ed at the  
meeting of  
the Justices  
upon  
privy  
search made  
for Rogues,  
and not o-  
therwise.

Quarter Sessions to be holden for this County, and in the mean time to hold her to such works, and to give her such due correction, by moderate Whipping or otherwise, as shall be fitting in your discretion, and according to the Law in that behalf provided; yielding her for her maintenance, &c. *ut supra*. And hereof see that you fail not at your peril. Dated, &c. See the Statute, 7 *Fac. cap. 4.* & *vide antea, tit. Rogues*, 7 *Jac. c. 4.*

Note, if any mean person shall but threaten to run away, and leave their family, (as aforesaid) any two Justices of Peace of that division may send them to the House of Correction, as aforesaid; but such their threatening must be proved by two sufficient witnesses upon Oath before the said Justices of Peace. *Vide antea, tit. Rogues.*

*A Mittimus to the House of Correction of the Mother  
of a Bastard-child.*

WE have sent you herewithall the body of *I.C.* of *W.* in the said County, single Woman, being lately delivered of a Bastard-child, like to be chargeable to the Parish of *W.* aforesaid: and for that the said *I.C.* is able to labour, and that thereby she may the better relieve her self and her said Child, these are therefore to will and require you to receive the said *I.* into your said house, there to be punished, and set on work during the term of one whole year, according to the Statute in that behalf provided. And hereof fail you not, &c.

*Correction.*

'Rogues and Vagabonds, sturdy Beggars, and other idle and disorderly persons sent to the House of Correction, are there to be punished by putting Fetters or Gyves upon them, and by moderate Whipping. 7 *Fac. c. 4.*

'So persons running, or threatening to run away, and leave their Family to the Parish. *Ibid.*

'The mother of a Bastard-child, &c. shall be set on work, and punished. *Ibid.*

'But where by the plain Letter of the Law there is not authority given to whip or punish Offenders (sent to the House of Correction,) there let the Justices of Peace forbear to appoint or order any whipping, except it be in open Sessions, or by the Order of the Quarter Sessions.

Note, that the greater part of the Justices of Peace assembled at the Quarter Sessions may set down orders for the correction and punishment of Offenders committed to the House of Correction.

And the Houses of Correction are to be used and employed for the keeping, correcting, and setting to work of such persons as shall be sent thither. See Stat. 7 *Fac. cap. 4.* *sc.* generally for Rogues, Vagabonds, sturdy Beggars, and other disorderly persons.

'What other manner of persons are to be sent to the House of Correction: See *hic cap. 11.* the Mother of a Bastard-child like to charge the Parish; c. 20. Counterfeiters: *cap. ult.* idle and disorderly servants; poor children refusing to be put out Apprentices, and their Parents enticing them from their Masters, and Servants running away; such as are able to labour, and shall run away, or threaten to run away, and leave their Wives or children to the Parish. So a person infected with the Plague, or dwelling in an house infected, if being commanded by a Justice of Peace to keep his house, he will not. Common Trespasers in spoiling of Corn or Woods, breaking of Hedges, or robbing Orchards, &c. being mean persons.

*A Mittimus to send to the Gaol such as shoot, &c. in Guns.*

CHAP. CLXXIX. V. 116.

*To the Keeper of His Majesties Gaol at the Castle of Cambridge, and to his Deputy or Deputies there, and to every of them.*

FORasmuch as this present day *A.B.* and *C.D.* of *B.* in the same County *Canab.* Yeomen, did arrest and bring before me at *C.* aforesaid one *I. at S.* in the said County Mariner, whom they had seen and found the same day (as they said) shooting in a Handgun, charged with Powder and Pellet, at a Coney in a certain place in *C.* within the said County called the Churchfield, contrary to the Law of this Realm, and thereupon prayed me that Justice may be done in that behalf. I *Fohn Cutts* Knight, being the next Justice of the Peace in the said County to the place aforesaid, did then at *C.* aforesaid, upon the said request, take the examination of the said *I. at S.* and did also then and there hear the Proofs of them the said *A.B.* and *C.D.* touching the said Offence. And for that it did manifestly appear unto me, as well by the Testimonies of them the said *A.B.* and *C.D.* as also by the plain confession of him the said *I. at S.* that he had not then Lands, Tenements, Fees, Annuities, or Offices, to the clear value of 100 *l.* and that he had shot in the said Handgun in manner and form as aforesaid; I do send you herewithall the body of him the said *I. at S.* as lawfully convicted of the said Offence before me, requiring you in His Majesties Name to receive him into your said Gaol, and him there safely to keep, (as His Majesties Prisoner) untill he shall have truly paid the pain and forfeiture of 10 *l.* of lawful money of *England*, laid upon him for his said Offence by the Statute thereof made in the three and thirtieth year of the Reign of the late King *Henry* the Eighth, that is to say, the one moiety thereof to our said Sovereign Lord, and the other moiety to them the said *A.B.* and *C.D.* the first bringers of him before me. And this shall be your sufficient Warrant in this behalf. Hereof fail you not as you will answer for your contempt at your own peril. Yeoven at *C.* aforesaid, the 3 day of *March* in the 20 year of the Reign of our said Sovereign Lord *Charles* by the grace of God King of *England*, *Scotland*, *France*, and *Ireland*, &c. Defender of the Faith, &c.

By me the said *Fohn Cutts*.

The Justices Record thereof.

**M**emorand. quòd vicesimo die Martii, anno regni Dom. nostri Caroli, Dei *Canab.* gratiâ, Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, Fidei Defensor. &c. *A.B.* et *C.D.* de *E.* in Com. præd. Yeoman, quendam *I. at S.* de *E.* in dicto Com. Mariner, invener. et viderunt apud *D.* in Com. præd. die et anno supradicto cum quòdam tormento (Anglicè vocat. a Handgun) onerato pulvere tormentario et globo plumbeo (Anglicè charged with Gunpowder and a Leaden Bullet) in quendam cuniculum aditum existent. in quodam loco ibidem vocato Churchfield sagittantem, et exonerantem dictum torment. contra formam Statuti in Parl. Dom. Henrici nuper Regis Angliæ octavi apud Westm. anno regni sui tricesimo tertio tento) provisi ac editi; ac proinde die et anno supradicto præfat. *J. at S.* arrestaverunt, et apud *D.* præd. *Johanne Cutts* Milite, uno (et dicto loco proximo) Fust. dicti Dom. Regis ad Pacem in dicto Com. conservand. necnon ad diversas transgress. et alia malefacta in eodem Com.

*Com. perpetrata audiend. et terminand. assignat. adtunc unà secum adduxerunt, petentes inde justitiam fieri. Quā quidem petitione auditā, ego prafat. Johannes Cutts apud D. præd. die et anno supradictō debite superinde examinavi præf. J. at S. ac probationes præd. A. B. et C. D. in hac parte cepi: ac propterea quod tam per probation. præd. quā per confessionem ipsius J. at S. adtunc et ibidem apparuit mihi manifeste, quod præf. J. at S. (cum non haberet in jure suo proprio, nec in jure uxoris sue ad usum suum proprium, nec aliqui alii ad usum ejusdem J. at S. haberent terras, tenementa, feoda, annuitates, aut officia ad clarum annum valorem centum librar.) in tormento prædictō modo et formā prædictis sagitasset, contra formam Stat. præd. Ego præf. Johannes Cutts prænominat. J. at S. die et anno supradictō proximæ Gaolæ dicti Domini Regis apud Cantab. in Com. præd. (de Transgress. præd. coram me convict.) commisi, ibidem moraturum quousque pœnam et forisfacturam decem librar' legalis moneta Angliæ verè solveret, viz. unam medietatem inde dict. Dom. Regi, & alteram medietat. inde dict. A. B. et C. D. primis ejusd. J. at S. coram me ductoribus. In quorum omnium fidem & test. ego præf. Jo. Cutts his præsentibus sigillum meum apposui. Dat. apud D. præd. die et anno supradictis.*

*Per me præfatum Johannem Cutts.*

Bailment. CHAP. CLXXX. V. 127.

Cambr.

**M**emorand. quod secundo die mensis Septemb. anno regni Dom. nostri Caroli, &c. venerunt coram nobis Johanne Cage Milite, et Roberto Castle Armig. duobus Just. dicti Dom. Regis ad Pacem in Com. præd. conservand. assignat. (apud H. in Com. præd.) A. B. et C. D. de E. in dicto Com. Teomen, et ceperunt in Ballium usque ad proximam Gaolam deliber. in dicto Com. tenend. quendam F. G. &c. Labourer, captum et detentum in prisione pro suspicionem cujusdam Felonia, &c. et assumpser. super se, sc. quilibet præd. A. B. et C. D. sub pœna 20 l. bonæ et legalis moneta Angliæ, et præd. F. G. assumpsit pro seipso sub pœna 40 l. similis moneta, de bonis et catallis, terris et tenem. eorum quorumlibet et cujuslibet eorum, ad opus dicti Dom. Regis, Hered. et Successor. suor. levandar. si præf. F. G. ad eand. prox. Gaolam deliber. personaliter non comparebit coram Just. dicti Dom. Regis, ad dictam Gaolam deliber. assignatis, ad standum recto de Felonia præd. et ad respond. dicto Dom. Regi tunc et ibidem de et super omnibus que illi objicientur. Dat. sub sigillis nostris die et anno primū supradictis. Vide antea tit. Bailment.

Lamb. 341

*Alias, sc. if the Gaoler can conveniently bring the Prisoner before the Justices.*

**M**emorand. quod 20 die Augusti, &c. A. B. de D. &c. et E. F. de G. &c. venerunt coram nobis M. D. et J. B. Armig. duobus Just. &c. et manucep. pro J. S. de, &c. uterque eor. sub pœna 20 l. &c. et præd. J. S. tunc et ibidem similiter assumpsit pro seipso sub pœna 40 l. consimilis moneta Angliæ, de bonis et catallis, terris et tenem. eor. et cujuslibet eor. ad opus et usum dicti Dom. Regis, Hered. et Successor. suor. fieri et levari, si præf. J. S. defecerit in Conditione indorsata.

**T**he Condition of this Recognizance is such, That if the withinbounden A. B. shall make his personal appearance before the Kings Majesties Justices of the Peace at the next general Sessions to be holden for this County, then and there to make answer to our Sovereign Lord the



the King, for and concerning the suspicion of stealing certain Corn, wherewithall he standeth charged, that then, &c.

Alias.

Crompt.

235.

21 H.7.20

Br. Main.

44.

**M**emorand. quod 30 die, &c. venerunt coram nobis, &c. A.B. de, &c. Canab. et D.E. de, &c. et F.G. de, &c. et manuceper. pro R.B. de L. in Com<sup>o</sup> praed<sup>o</sup> Gen<sup>o</sup>, viz. quilibet eor<sup>u</sup> corpus pro corpore, quod idem R.B. personaliter comparebit coram praef. Just. et sociis suis Just. Dom. Regis ad prox. general. Session. Pacis in Com<sup>o</sup> praed<sup>o</sup> tenend. ad stand. recte in Cur<sup>ia</sup>, (si quis versus eum loqui voluerit) de diversis Feloniis et Transgr. unde idem R.B. indictatus existit (ut dicitur) et ad respond. dicto Regi de eisdem prout debet, &c. Vide antea tit. Bailment, that it must be upon a certain Summe of Money.

And here *Stare recte in Curia* is, when he that standeth at the Bar hath no man to object against him.

Crompt.

153.

Yet note, upon this last manner of Bailment the Mainpernors shall be onely fined if the Prisoner maketh default. 21 H.7.20.

Before the Statute of *Marl. cap. 27.* if one arrested or in prison for Felony had been bailed, and at the day the Prisoner would not answer, but betook himself to his Clergy, &c. then his Mainpernors were amerced, &c. But now by the Statute, if they have the Body at the day they shall not be amerced, although the Prisoner will not answer, &c. Neither shall they forfeit their Recognizance, if they have the Body of the Prisoner there, although the Prisoner will not answer, &c. and yet the words of the Recognizance or Bailment are usually, *Ad respond. dicto Dom. Regi, &c. ut supra.* But these words seem to be of course.

Alias, to bail a Prisoner for the Peace.

**M**emorand. &c. A.B. de, &c. D.E. de, &c. et E.F. de, &c. venerunt coram me M.D. &c. et manuceperunt pro R. B. de, &c. quod ipse Pacem geret erga cunctum populum Dom<sup>o</sup> Regis, et precipue erga J.S. sub pena cuiuslibet Manuceptoris 20 l. et praed<sup>o</sup> R.B. sub pena 40 l. et quod praed<sup>o</sup> R.B. comparebit coram Just<sup>o</sup> Dom<sup>o</sup> Regis ad prox<sup>o</sup> general<sup>o</sup> Session<sup>o</sup> Pacis pro Com<sup>o</sup> praed<sup>o</sup> tenend. &c.

*The Liberate to deliver a Prisoner committed for Felony.*

Lam. 342.

*E.F.* and *E.D.* Esquires, two of the Justices, &c. to the Keeper of His Majesty's Gaol in C. &c. Greeting. Forasmuch as *F.G.* &c. Labourer, hath before us found sufficient Mainprise to appear before the Justices of Gaol-delivery, at the next general Gaol-delivery to be holden in the said County, there to answer to such things as shall be then on the behalf of our said Sovereign Lord objected against him, and namely to the felonious taking of two Sheep, (for the suspicion whereof he was taken and committed to your said Gaol :) We command you on the behalf of our Sovereign Lord, that if the said *F.G.* do remain in your said Gaol for the said cause, and for none other, then you forbear to grieve or detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the pain will fall thereon. Given under our Seals this, &c.

War<sup>o</sup>

Warrant. ad liberand. Servientem extra Gaolam.

*Cantab.*

**F**Ranciscus Brakin *Armig. unus Just. &c. Custodi Gaola dicti Dom' Re-* *Crompt.*  
*gis in Com' prad' salut. Quia W.K. de N. Labourer, coram me invenit* *238.*  
*suffic' securitat' essendi coram Just' dicti Dom' Regis ad Pacem in Com' prad'*  
*conservand' &c. ad prex' general' Session' Pacis in Com' prad' tenend. ad re-*  
*spond' tam dicto Dom' Regi quam E.F. de, &c. de transgr. et contemptu suis*  
*contra formam Stat' de Servientibus nuper edit' et provis. Ideo tibi ex parte*  
*dicti Dom' Regis mando, quod prad' W.K. a prisona tua, si ea occasione, et non*  
*alia, ibid' detineatur, sine dilatione delib' fac. Dat. &c.*

Wheresoever a Justice of Peace upon his own motion and discretion hath committed one to the Gaol or House of Correction for (want of Sureties for) the Peace or Good Behaviour, or for being a Vagrant or idle person, or the like, it seemeth the same Justice of Peace may in like discretion afterwards discharge him again, and make his *Liberate* or Warrant to deliver such Prisoner. See 14 H.6.fol.8. Br.Impr.27.

To deliver a Prisoner committed for the Peace or Good Behaviour.

**F.B.** *Armig. unus Just. &c. Vic. (seu Custodi Gaola) &c. Quia J.S. in*  
*prisona Dom' Regis in custod. tua existit, ad sectam cujusd. A.S. de se bene ge-*  
*rendo, vel pro Pace gerenda erga Dom' Regem et cunctum populum suum, (et*  
*praecipue erga prad' A.S.) invenit coram me suffic' secur. vel quatuor Manu-*  
*captos, scil. A.B.D.E.F.G. et H.J. &c. qui manucep' pro prad' J.S. quod ipse*  
*J.S. non inferet, nec inferri procurabit, per se nec per alios, eidem A.S. seu ali-*  
*cui de populo dicti Dom' Regis, aliquod damnum seu gravamen de corpore suo per-*  
*minas, insidias, insultum, seu aliquo alio modo, quod in lesionem seu perturbat'*  
*Pacis Dom' Regis cedere valeat quovis modo, viz. quilibet eor' Manuceptor'*  
*sub pena 20 l. Ideo ex parte dicti Dom' Regis tibi mando, quod prad' J.S. in*  
*prisona Dom' Regis in custodia tua, ea occasione et non alia, existentem, indilate*  
*delib' fac. Dat. &c.*

Releases of the Peace. CHAP. CLXXXI. V. 128.

The Release of the Justice of Peace.

**E**Go *praf. H. Martin, qui supranominat' A.B. ad prad' secur' Pacis inveni-*  
*end' ex mea discretione compuli, eandem secur' Pacis (quantum in me est)*  
*ex mea discretione 1 die Aug. &c. remisi et relaxavi. In cujus rei testimon'*  
*huic praesenti Relaxationi mea sigillum meum apposui. Dat. die et anno supra-*  
*dictis.*

The Release of the party before the same Justice that took it.

*Cantab.*

**M**emorand' *quod primo die Aug. &c. praf. E.F. venit coram me Roger'*  
*Thornton, et gratis remisit et relaxavit (quantum in se est) prad' secur'*  
*Pacis per ipsum coram me versus supranominat' A.B. petitam. In cujus rei*  
*testim' ego praf. Roger' Thornton sigill' meum apposui. Dat. &c.*

These

These two former Releases are to be written under the Recognizance it self: and if the Justice shall onely subscribe his Name to the Release without his Seal, it is well enough, (especially where the Recognizance is without Seal.)

Or the Release of the party may be by it self in this form, *scil.*

**M**emorand' quod E.F. de S. in Com' prad' Teoman, i die Aug. anno regni Cantab, Dom' nostri, &c. venit coram me Isaac Barrow Armig. uno Just' dicti Dom' Regis ad Pacem in Com' prad' conservand' assign. apud W. in Com' prad. et ibidem remisit et gratis relaxavit R. W. de S. in Com' prad' Labourer, secur' Pacis per ipsum E.F. versus dictum R.W. coram me petitam. Dat' die et anno supradictis.

And if the Release be made before another Justice which took not, or hath not the Recognizance, it may be thus.

**M**emorand' quod A.B. de E. in Com' prad' Teoman, i die Aug. &c. venit Cantab. coram me Rob. Haggar Armig. uno Just' dicti Dom' Regis ad Pacem in Com' prad' conservand' assign. (apud W. in Com' prad') et secur' Pacis quam habet versus J.S. de, &c. penitus remisit et relaxavit. Dat' die et anno supradictis.

' But note, that none of these Releases will discharge the Recognizance, or the Appearance of the party bound thereby, but that he must appear according to the Condition of the Recognizance for the safeguard of the Recognizance. See *hic c.*

#### *Release for the Good Abearing.*

Lat. 126.  
P. R. 22.

Mr. Lambert seemeth to doubt whether the Surety of the Good Abearing may be released by the party, (because it seemeth more popular then the Surety of the Peace.) But others do hold that it may be released; and then may the form of such Release be easily made by those which are before concerning the Peace, using the words *Securitatem de se bene gerendo* instead of the words *Securitatem Pacis*. ' But notwithstanding such Release, it shall be safe also for the party bound to appear according to the Recognizance.

#### *Indentures for Apprentices.*

**T**His Indenture made the 20 day of February, &c. witnesseth, That A.B.C.D. and E.F. Overseers for the Poor in the Town of H. in the County of C, and I.S. Churchwarden of the same Town, by and with the consent of Sir I.M. Knight and M.D. Esquire, two of His Majesties Justices of the Peace for the County of Cambridge, have by these presents put, placed, and bound I.H. (being a poor fatherless and motherless child) as an Apprentice with R.W. of H. aforesaid Baker, &c. and as an Apprentice with him the said R.W. to dwell, from the day of the date of these presents, untill the said I.H. shall come to be of the Age of 24 years, (if it be a Woman, then untill her Age of 21 years, or the time of her Marriage) according to the Statute in that behalf provided. By and during all which time and term the said I.H. shall the said R.W. his Master, well and faithfully serve in all such lawful business as the said



said *I.H.* shall be put unto, according to his power, wit and ability; and honestly and obediently in all things shall behave himself towards his said Master, his Wife and Children, and orderly and honestly towards all the rest of the Family of the said *R.W.* And the said *R.W.* for his part promiseth, &c. 'the said *I.H.* in the Craft, Mystery and Occupation the which he useth, after the best manner that he can or may, 'to teach and inform, or cause to be taught and informed, as much as 'thereunto belongeth, or in any wise appertaineth: And also during all the said term to find unto the said Apprentice Meat, Drink, Linen, Woollen, Hose, Shooes, and other things needful or meet for an Apprentice, &c. In witness whereof, &c.

In this Indenture may also be added other the usual Covenants for Apprentices, which see *lib. Intr. verbo Covenant*, in *Apprentices*, and *West.* 581.

*Forcible Entry.* CHAP. CLXXXII. *V.* 129.

The form of the Record of a Forcible Entry by the Justice upon his View.

*Cantab.*

**M**emorandum, quod 8 die mensis Januar. Anno regni Dom. nostri Caroli, &c. questus est mihi Johanni Cotton Militi, uni Justiciar. dicti Domini Regis ad Pacem in dicto Comitatu conservand. assignat. quidam A.B. de W. in dicto Comitatu Yeoman, quod C.D. de W. præd. & nonnulli alii Pacis dicti Dom. Regis perturbatores ignoti, in domum mansionalem ipsius A.B. in W. præd. manu forti ingressi sunt, & ipsi A.B. disseisiverunt. ac ead. manu forti & armata potentia adhuc tenent, ac proinde petiit a me sibi in hac parte remedium apponi. Quâ quidem querimonia & petitione audita ego præfatus Johan. Cotton immediate ad dictam domum mansionalem personaliter accessi, ac in eadem domo adtunc inveni præfatum C.D. & quosdam E.F. & G.H. &c. domum illam vi & armis, manu forti & armata potentia, (viz. arcubus & sagittis, gladiis, pugionibus, galeis, & loriciis) tenentes, contra formam Statuti in Parlamento Domini Richardi nuper Regis Angliæ secundi, anno regni sui decimo quinto tento, provisi, & contra formam diversorum aliorum Statut. Ac propterea ego præf. Johan. Cotton præd. C.D. E.F. & G.H. adtunc & ibidem arrestavi, proximaque Gaole dicti Dom. Regis apud Castrum Cantabr. in dicto Comitatu duci feci, ut de dicta manu forti tentione per visum & recordum meum convictos, ibidem moratur. quousque Fines dicto Dom. Regi pro transgress. suis prædictis fecerint. Dat. apud W. præd. sub sigillo meo, die & anno supradictis.

*The form of the Mittimus (to the Gaol) of such as hold Land by Force.*

*Cambr.*

**J**ohn Cotton Knight, one of the Justices of the Peace of our Sovereign Lord the Kings Majesty within his said County of Cambridge, to the Keeper of his Majesties Gaol at, &c. in the said County, and to his Deputy and Deputies there, and to every of them, Greeting. Whereas upon complaint made unto me this present day by A.B. of Weston in the said County, Yeoman, I went immediately to the dwelling house of the said A.B. of Weston afore said, and there found C.D. E.F. and G.H. of D. afore said Labourers, forcibly and with strong hand and armed power holding the said house, against the Peace of our Sovereign Lord, and against the form of the Statute of Parliament thereof made in the fifteenth year of the late King Richard the second: Therefore I send you (by the bring-

bringers hereof) the said C.D, E.F. and G.H, convicted of the said Forcible holding by mine own View, Testimony and Record ; commanding you in his Majesties name, to receive them into your said Gaol, and there safely to keep them, untill such time as they shall make their Fines to our said Sovereign Lord for their said Trespasses, and shall be thence delivered by the order of the Law of the Land. Hereof fail you not, upon the peril that may follow thereof. Yeoven at *Weston* afore-said, under my Seal, the day and year above-said.

The form of a Precept (to the Sheriff) to return a Jury for an Inquiry.

**J**ohannes Cotton Miles, unus Justiciar. Domini Regis ad Pacem in Com. Cantab. Cantabr. conservand. assign. Vicecomiti ejusdem Comitatus salutem. Ex parte dicti Domini Regis tibi mando & precipio, quod venire facias cum me apud Balsam in Com. prad. vicesimo die Septem. proxime futur. 24 probos, sufficientes, & legales homines de vicineto de Weston in Comitatu prad. quorum quilibet habeat 40 solid. terrar. & tenementor. vel redd. per annum ad minus ultra reprimas, ad inquirend. sup. Sacrament. suum pro dicto Domino Rege de quodam Ingressu manu forti facto in mesuag. cujusdam A.B. apud Weston prad. contra formam Stat. in Parliam. Dom. Henric. nuper Regis Angliæ sexti, anno regni sui octavo tento, editi, ut dicitur. Et videas quod super quemlibet Furatorum per te in hac parte impanellandorum viginti solidos de exitibus ad prefat. diem retournes. Et hoc nullatenus omittas sub pœna viginti librar. quam noveris te incursum si in executione premissor. tepidus aut remissus fueris : Et habeas ibi tunc hoc Preceptum. Teste me pref. Johanne Cotton, decimo die Martii, anno regni Domini nostri Jacobi Dei gratiâ, Angliæ, Scotiæ, Franciæ & Hiberniæ Regis, Fide Defensor. &c.

Note, when the Justices of Peace are to inquire upon the Statute of 8 H. 6. (or any other Statute) they make their Precept to the Sheriff, to return before them Panels to enquire for the King (generally) of such things as shall be enjoined them on the Kings Majesties behalf, without saying, to enquire of a Forcible Entry, or of a Riot, &c. *Crompt. 123.*

The form of the Enquiry, Presentment, or Verdict of the Jury.

**I**nquisitio pro Domino Rege capt. apud B. in Comitatu prad. 10 die Julii, *Cantab.* Anno regni Domini nostri Caroli, Dei gratiâ, Angli. Scotiæ, Franciæ, & Hibern. Regis, Fidei Defensor. &c. per sacramentum A.B. C.D, E.F, &c. coram Johanne Cotton Mil. uno Justiciar. dicti Domini Regis ad Pacem in dicto Comit. conservand. necnon || ad diversas Felonias, Transgress. & alia \* Yet these words of & armis here seem to be needless, being necessarily implied in the words manu forti. Vide antea tit. Forcible Entry. † Thus last clause may be omitted.

|| Pur le necessity de ce parti vi- de hic quia. malefacta in eodem Comitatu perpetrata audiend. & terminand assign. Qui dicunt super sacrament. suum prad. quod A.B. de, W. prad. Yeoman, diu legitime & pacifice seissus fuit in dominico suo ut de feodo de & in uno mesuagio, &c. cum pertinentiis in W. prad. et possessionem ac seisinam suam pradict. sic continuavit, quousque C.D. de, &c. et alii malefactores ignoti, primo die Septemb. ultimo elapso, (\* vi & armis, viz. cum baculis, gladiis, arcibus et sagittis, cultellis, falcastris, lapid. et aliis armis defensivis et invasivis) in mesuagium pradict. &c. intraverunt, ac ipsum A.B. sic disseissum et expulsum ab eodem mesuagio, &c. à prad. primo die, &c. usque ad diem capionis hujus Inquisitionis, cum hujusmodi fortitudine et potentia armata extra tenuerunt, et adhuc extra tenent, in magnam Pacis dict. Dom. Regis perturbationem, ac contra formam Statuti in Parliam. Dom. Henric. nuper Regis Angliæ sexti, anno regni sui octavo tento, in tali casu editi et provisi. † Ubi nullus eorum, nec ali-

H h h

quis,

quis ulius, cujus statum ipsi aut aliqui eorum habuerunt, aut habuit, aliquid in eodem mesuagio, &c. aut in aliqua inãd parcella habuerunt, aut habuit, infra tres annos proximè ante ingressum suum prædictum, neque alio tempore præcedente, ad notitiam Furator. præd.

#### Alio modo super Statutum 8 H.6.

\* And yet it seemeth not best to recite the Stat. but shew the Forcible Entry, &c. and to conclude, contra formam Stat. in Parlamento, &c. Vide post. tit. Indictments.

**F**urator pro Domino Rege præsentant, \* Quòd cum in Statuto in Parliam. Domini Hen. nuper Regis Angl. sexti, apud Westmonast. anno regni sui octavo tent. edit. inter cetera continetur, Quòd si aliqua persona, sive aliqua persona, de aliquibus terris aut tenementis manu forti expuls. seu disseisit, vel pacificè expellat. et postea manu forti extrà teneatur, vel aliquod Fcoffament. vel Discontinuac. inãd post talem Ingressum ad jus possessoris defraudandum et tollendum aliquo modo fiat, habeat in hac parte pars gravata versus talem Disseisitor. Assisam, vel Actionem Transgress. et si pars gravata per Assisam vel per Actionem Transgress. recuperet, vel per Veredictum vel aliquo alio modo per debit. Legis formam inveniatur, quod pars Defendens in terris et tenementis sic ingressus fuit, vel ea per vim post talem Ingressum suum tenuit, recuperet Quer. dampna sua ad triplum. versus talem Defend. et ulterius idem Defend. Finem et redemptionem dicto Dom. Regi faciet, prout in Statut. præd. plenius continetur. Quidam tamen W.W. nuper de W. in Com. præd. Husbandman. et G.D. de eadem Labourer, Statutum præd. minimè ponderant. nec pœnam in eodem Statut. content. aliquam verentes, 20 die Februar. anno regni Regis Caroli, &c. 21, apud C. in Com. præd. in unum Horreum, existent. liberum tenement. Roberti W. Decani Ecclesie Cathedralis W. manu forti ac vi et armis, viz. gladiis, &c. intraver. et Ingressum fecerunt, et præd. Decanum Ecclesie præd. à libero tenemento suo manu forti, ac vi et armis præd. inãd sine iudicio expulerunt, et disseisiver. et L.P. Milit. firmar, Decani præd. Horrai præd. adiunc et ibid. de præd. Horreo expulerunt et eiecerunt, et præf. Decanum sic inãd expulsam et disseisit. à præd. 20 die Februar. anno supradict. usque diem captionis huius Inquisitionis, de præd. Horreo vi et armis præd. et manu forti extrà tenuerunt, et adhuc extrà tenent, in contemptum dicti Domini Regis nunc, et ad grave dampnum ipsius R, et contra Pacem dicti Domini Regis, et contra formam Statuti præd. &c

Another, wherein the Statute is not recited.

**I**nquiratur pro Domino Rege, si A.B. & C.D. nuper de, &c. assumptis eis aliis malefactoribus & Pacis Dom. Regis perturbatoribus, modo guerrino arraiat. ad numer. 12. person. quorum nomina ad præsens Furator. ignor. 10 die, &c. apud D, &c. (vi et armis, viz. &c.) in unum mesuag. cum pertin. supra pacificam possessionem. M.L. intraver. & dictum M. à possessione sua præd. expul. et disseisiverunt, et eundem M. sic expulsam et disseisitam à præd. mesuagio cum pertin. vi et armis præd. ac manu forti extrà tenuerunt, et adhuc extrà tenent, contra Pacem dicti Dom. Regis, ac contra formam Statuti Dom. Hen. nuper Reg. Angl. 6. anno regni sui 8. inãd edit. et provis.

#### Alio modo super Statutum 5 R. 2.

**I**nquiratur pro Dom. Rege, &c. \* Quòd cum in Statuto in Parlamento Dom. Richardi nuper Regis Angl. secundi post Conquestum, apud Westm. anno regni sui quinto tent. edit. inter cetera ordinat. sic quòd nullus faceret Ingressum in aliqua terras sive tenement. nisi in casu ubi Ingressus datur per Legem, et

\* For such recital of the Stat. see after in the title Indictments.



illo casu non manu forti, nec cum multitudine gentium, sed licito et quieto modo tantum; et si quis in contrarium fecerit, et inde debite convict. fuerit, per imprisonamentum corporis sui puniatur, et Finem ad voluntatem Domini Regis faciat, prout in eodem Stat. inter alia plenius continetur: Quidam tamen T.H. de I. in Comitatu prad. Yeoman, et alii, &c. Statutum prad. minime ponderant. 2 die Maii, anno Regni Dom. Caroli, &c. 21 vi et armis, viz. baculis, gladiis, falcastris et bifurcis, in unum Clausum I.C. Militis, jacent. apud D. in Com. prad. in quodam loco ibidem vocat. H, super possession. ejusdem I.C. Militis, ubi ingressus eis aut eorum alicui non datur per Legem, Ingressum fecerunt; & cent. perticas sepium vivar. ipsius I. Militis, adtunc et ibid. crescent. eradicaver. evulserunt et spoliaverunt, in dicti Domini Regis nunc contemptum, et ad grave dampnum ipsius I.C. Militis, et contra formam Stat. prad. &c.

"The Lord Cromwel was indicted for a Forcible Entry upon Andrewes, and in the later end they conclude thus, *Etsi domus prad. non fuit in possessione Domina regina*, they find it *billa vera*: this was adjudged a void Indictment, for it is *quasi à Conditione prad. Telv. p. 15*

"Fenton and others indicted, *quod unum mesuag. &c. existens solum et liberum tenem. I.S. ingressum fecerunt*, and adjudged good. *I. Ingressum fecer.* without saying in mesuag. is good. *2. Existens* without *adtunc* relates to the time of the Entry. *Telv. p. 27.* Yet *Latch 109.* is contrary.

"Ford was indicted for a Forcible Entry and detainer, and the Jury found as to the Forcible Entry *Ignoramus*, and as to the Forcible Detainer *Billa vera*, the Indictment being removed by *Certiorari*, and adjudged naught. *H.4 Fac. B. R. Telv. p. 99.*

"Shillet and 7 others were indicted for a Forcible Entry upon the possession of B. Farmer de C. and disseizing C. but lay no expulsion of B, and adjudged naught: but if it had not been alledged that B. was Farmer de C, but generally that they entred *super possessionem* B, and disseized C, it had been good enough. *M.7 Fac. B. R. Telv. p. 195.*

"An Indictment was endeavoured to be quashed, because it is not said that he entred *manu forti*; but the Court said it was good, if it be said, *quod extra tenuit manu forti.* 2 Exception, because a Forcible Entry cannot be *in medietat. manerii*: but the Court held it good. *Latch p. 224.*

Note, that upon Indictments, &c. the Jury be onely charged with the effect of the Bill of Indictment, *sc.* whether the parties be guilty of the Forcible Entry, (or other Fact) or not; and not whether they be guilty in or under such manner and form as the Indictment or Bill specifeth, or not, (*sc.* not whether it were with Staves and Swords, &c. which is but matter of form, and must be kept in every Indictment, though the parties had neither Staff, Sword nor other weapon.) And so when the Jury say *Billa vera*, they say true, as they take the effect of the Bill to be. And if there be false Latin in the Bill of Indictment, and the Jury find it *Billa vera*, yet their Verdict is true, *sc.* as to the Fact; and their Verdict stretcheth not to the form of the words, but to the effect of the matter, and to the Fact, *sc.* they are to inquire whether there were any such Fact done by the parties, or not. And so though the Bill vary from the day, from the year, and from the place, and the Jury find *Billa vera*, yet they have given a true Verdict. *Doctor and Student 162, 163.*

And therefore the Justices of Peace before whom such Indictments of Forcible Entry or of Riots, &c. shall be taken, shall do well to inform the Jury, that they are bound to regard the effect of the Bill of Indictment, or the Fact, and not the Form.

The Warrant to the Sheriff for making of Restitution, (if the Justice himself will not make it.)

Canab.

**J**ohan' Cotton Mil. unus Fust. &c. assign. Vic' ejusd' Com' salut. . Cum per quandam Inquisition' patria coram me apud B. in Com' prad. 29 die Julii, &c. super sacrament' A.B.D.E.F.G. &c. ac per formam Stat' de Ingressibus manu forti factis in tali casu provis. comp' fuit, quod E.F. &c. primo die Sept. &c. in quoddam messuag. &c. A.B. &c. in W. prad', vi et armis ingressi sunt, ac ipsum A.B. inde tunc manu forti disseisiverunt et expuler. et prad' A.B. sic expulsus a prad' messuag. &c. a prad' primo die Sept. &c. usque ad diem captionis Inquisition' prad. manu forti et cum potentia extra tenuerunt, prout per Inquisition' prad' plenius liquet de recordo. Ideo ex parte dicti Dom. Regis tibi mando et precipio, quod (ad hoc debite requisitus) una cum Posse Comitatus tui (si necesse fuerit) accedas ad messuag. et cetera premissa, ac eadem cum pertin. reseisiri facias, et pras. A.B. ad et in plenam possessionem suam inde, prout ipse ante Ingress. prad' fuerat seisis. restitui et mitti facias, juxta formam dicti Stat. Et hoc nullatenus omittas sub periculo incumbente. Teste me prefat. Johan' Cotton, &c.

This Warrant to the Sheriff to make Restitution shall be under the Teste of one of the Justices onely, as it seemeth Dyer 182.

A Certificate of the Presentment or Verdict of the Jury in the Kings Bench, whereof vide antea tit. Forcible Entry.

A Certificate into the Kings Bench of the Record of a Force viewed by the Justice, whereof vide antea tit. Forcible Entry.

\* See the like hic & sine.

These two former Certificates (and the like may be done and made by the Justices of Peace by way of a \* Letter (as it seemeth) inclosing therein the said Presentment of the Jury, or the said Record of the Justices; except the same be removed thither by a Certiorari, and then may the Justices return them in such manner as appeareth hereafter, tit. Certiorari, with some little alteration.

8 Ed. 4. 18  
Br. Cor.  
152.  
Cro. 133.

Or the Justice of Peace may himself deliver into the Kings Bench such Presentment found before him, or such Record made by him, and the like, and that without any Certiorari, for that he is a Judge of Record. See hic.

The form of a Certificate (or the manner of the Return) of the Writ upon the Statute of Northampton into the Chancery.

The Return

Upon the Writ it self these words may be indorsed, Executio istius Brevis patet in quadam Schedula eadem Brevi confusa. And the Schedule may be thus.

The Certificate.

**E**Go Johan' Cotton Miles, unus Custod' Pacis Dom' Regis in Com' Cantab. certifico in Cancellarium dicti Dom' Regis, quod virtute istius Brevis mihi primo deliberati 10 die Aprilis anno, &c. publice proclamari (ex parte dicti Dom' Regis) feci apud B. cujus in dicto Brevi fit mentio, prout in dicto Brevi precipitur. Et quod quidam A.B. et D.E. de F. in Com' prad' Labourers, prad' Proclam' parvi pendentes, post Proclam' prad' ibid' sic factam, armati fuerunt, ac armati potentiam ibid' duxerunt, sc. duas galeas, unum arcum et decem sagittas, duos gladios, et totidem pugiones, in perturbationem Pacis dicti Dom' Regis, ac terrorem populi sui, necnon in contempt' Stat' in dicto Brevi specificati manifestum. Ac proinde dicti A.B. et D.E. una cum armaturis

turis suis præd' arrestavi, et eor' corpora ad prox' prisonam dicti Dom' Regis in Com' præd' duci feci, ibid' moratur' donec aliud à dicto Dom' Rege pro ipsor' deliberatione habuero in mandatis. Armaturas etiam eor' præd' appretiari feci per A.B.D.E. et F.G. de B. præd' Teomen, ad hoc juratos, qui dicunt super sacrament' suum præd. quòd dua galeæ valent decem solid. et quòd dicti arcus et decem sagitti valent sex solid. et quòd gladii præd' valent viginti solid. et quòd dicti pugiones valent quinque solid. et sic Armatura præd' valent in toto quadraginta et un' solid. de quibus paratus sum respondere secundum tenorem dicti Brevis. In cujus rei testim' huic præsentì Certificationi meæ sigill' meum apposui. Dat' apud D. præd' die et anno supradictis.

Jo. Cotton.

*The form of a Certificate to be made by him which shall take the Oaths of a Justice of Peace by Commission or Dedimus Potestatem.*

Upon the Commission (or Dedimus Potestatem) indorse these or the like words, *Executio istius Brevis patet in quadam Scheda huic Brevi annexat.* And the Certificate may be thus.

**E**GO M.D. in Cancellaria Dom' Regis certifico, me virtute Brevis Dom' Regis huic Scheda annex. 10 die mensis Decemb. anno regni dicti Dom' Regis Jacobi, Dei gratiâ, Regis Angliæ, &c. 19, et Scotiæ 55, apud West Wratting in Com' Cant. recepisse sacrament' Johan' Millefent Mil. (in Brevi præd. nominat.) tam de officio Custod. Pacis dicti Dom' Regis in dicto Com' Cant' bene et fideliter faciend. juxta formam Scheda Brevi præd' annex. quam sacram. specificat' in Actu Parl' anno regni Dom' Eliz. nuper Regina Angliæ primò factò, secundum tenor' Brevis et Scheda Brevi præd' similiter annex. et in omnibus prout in præd' Brevi præcipitur. In cujus rei testimonium, &c.

M. D.

Riots. CHAP. CLXXXIII. V. 130.

The form of the Record of a Riot viewed by the Justices and Sheriff or Undersheriff.

**M**Emorand. quòd vicesimo die Jan. anno regni Dom' nostri Caroli, Dei Cantab' gratiâ, &c. nos Johan' Cutts Mil. et Johan' Cage Mil. duo Fust. dicti Dom' Regis ad Pacem in Com' præd. &c. assign. et Willielmus Wendy Mil. adunc Vic' ejusd' Com. ad gravem quarim' et humilem petition' A.B. de D. in dicto Com' Teoman, in propriis personis nostris accessimus ad domum mansional' ipsius A.B. in D. præd. et adunc et ibid' invenimus D.E.F.G. et H.I. de D. præd' Labourers, ac alios malefactores, et Pacis dicti Dom' Regis perturbatores ignotos, (ad numerum decem pers.) modo guerrino arraiatos, viz. gladiis, pugionibus, galeis, loricis, arcubus, et sagittis, illicitè et riotosè aggregatos, et eandem domum obsidentes, multa mala in ipsum A.B. comminantes, in magnam Pacis dicti Dom' Regis perturbationem, ac populi sui terrorem, et contra formam Stat' in Parl' Dom' Hen' nuper Regis Angliæ quarti, anno regni sui decimo tertio tento, editi et provisi. Ac propterea nos pref. Johan' Cutts, Johan' Cage, et Willielmus Wendy, præd' D.E.F.G.H.I. &c. tunc et ibid' arrestari, ac prox' Gaola dicti Dom' Regis in Com' præd' duci, fecimus, per visum et recordum nostrum de illicita Congregatione et Rioto præd' convictos, ibid' moratur' quousque Finem dicto Dom' Regi proinde fecerint. In cujus rei tē-

Hhh 3

stimonium



*stimonium huic presenti Recordo nostro sigilla nostra apposuimus. Dat' apud D. prae' die et anno primo supradictis.*

And if a man be slain or maimed, or a Rescous be done to the Officer <sup>Lam. 312.</sup> by the Rioters, then the Record ought to be *riotosè occiderunt*, or *riotosè mahimaverunt*, or *riotosè rescusserunt*, but not *felonice*; nor simply *rescusserunt*, because their Authority is in this case restrained to the Riot only; so as notwithstanding that Record the parties may plead Not Guilty to the Felony or the Rescous, howsoever for the Riot they are estopped.

*Mittimus.*

The *Mittimus* for conveying the Rioters to the Gaol may (with some few words of change) be made out of that which is here before for such as hold by Force. See hereof *paulo ante* amongst the Precedents in *Forcible Entry*.

The Precept (to the Sheriff) to return a Jury for an Inquiry upon a Riot.

*Camab.*

**J**ohannes Cutts *Mil.* et Johannes Cage *Mil. duo Fust. &c. assign. Vic. ejusd' Com' salut.* *Ex parte dicti Dom' Regis tibi precipimus, quod venire facias coram nobis apud I. in Com' prae' 2 die Jan' prox' futur. 24 probos, suffic. et legales homines, de Com. prae. quorum quilibet habeat terras et tenementa infra dict' Com' liberi tenementi per chartam ad annum valorem viginti solid. aut per copiam Rot' Cur' ad annum valorem viginti sex solid' et octo denar. aut per utramque, ultra omnes reprisas, ad inquirend' pro dicto Dom' Rege, ac pro indemnitate nostra in hac parte super sacrament' suum, de quibusdam illicitis aggregationibus et Riotis apud D. in Com' prae' nuper commissis, ut dicitur. Et hoc nullatenus omittas sub pena viginti librar. quam incursumus es, si in executione praemiss. defeceris. Et habeas ibi tunc nomina Furat' prae' et hoc Praecept. Dat' sub sigillis nostris 20 die Jan. anno regni dicti Dom' nostri Caroli, &c.*

The form of the Inquiry, Indictment, or Presentment of the Jury.

*Camab.*

**I**nquisitio pro Dom' Rege, &c. (as before in Forcible Entries) coram Johanne Cutts *Mil.* et Johanne Cage *Mil. duob' Fust. &c. qui ad hoc jurati et omerati dicunt super sacrament' suum prae. quod D.E.F.G. et H.I. de S. in Com' prae' Labourers, simul cum aliis malefactoribus et Pacis dicti Dom' Regis perturbatoribus ignotis, (ad numerum septem person.) modo guerrino armati, vi et armis, viz. hawberdis, gladiis, arcubus, et sagittis, 10 die mensis Jan' ult' praeterito, apud D. in Com' prae. inter horas octavam et nonam post meridiem ejusd. diei, domum mansionalem A.B. de D. prae' Teoman, situat' in D. prae. riotosè freger' et intrav', et in ipsum A.B. tunc et ibid' insultum fecerunt, ac ipsum tunc et ib' verberaverunt, vulneraverunt, et indignis modis tractav', ita quod de vita ejus desperabatur, in magnam Pacis dicti Dom' Regis perturbationem, et populi terrorem, ac contra formam Stat' de Riotis, Routis, & Congregat' gentium illicitis, in Parl' Dom' Hen' nuper Reg' Angl' quarti, anno regni sui decimo tertio tento, provisum et editum.*

Note that all Indictments of Riots or Forcible Entries, &c. taken before Justices of the Peace must be after this form, *sc. Inquisitio, &c. capta, &c. coram J.C. et R.T. &c.* (if out of the Sessions; or if at the Sessions, then *coram J.C. et sociis suis*) *Fustic' Dom' Reg' ad Pacem in dicto Com' conservand'*,

*servand', necnon ad divers' Felon', &c. qui, &c. ut hic in Forcible Entry.  
Vide etiam hic antea.*

Alias.

**I**Nquisitio, &c. Qui dicunt, &c. quod A.B, C.D, et E.F. de, &c. aggreg' eis quampluribus aliis malefactor' et Pacis Dom' Reg' perturbator' ignotis, ad numer' sex person', modo guerrino arraiati, per instigationem & procurationem J.S, 3 die Sept. anno, &c. vi & armis, viz. gladiis, baculis, et aliis arm. tam invasivis quam defensivis, apud Ab. mag. in Com. Cant', injuste, riosè & rontosè assemblerunt, Clausumq; W.H. Milit. apud A. præd. adtunc et ibid. injuste freger' & intraver', & 10 partic. Sepium vivar. ipsius W.H. Militis adtunc ibid. crescent. eradicaver', evulserunt, & spoliaverunt, ad grave dampnum ipsius W.H, ac contra Pacem dict. Dom. Regis, & contra formam diversor. Stat. in hujusmodi casu editor. & provisor.

Quick  
Hedges de-  
stroyed.

Alias.

**C**lausum Willihelmi H. (apud F. or vocat', &c.) infr. Paroch. de Ab. magna in Com. præd. riosè fregerunt et intrav', ac Sepes Clausum præd. W. H. ad numerum sexcent. ped. adtunc et ib. existent. laceraverunt, irru- per. et prostraver', ad grave dampnum, &c. ac contra Pacem, &c.

Hedges cut  
or pulled  
up.

Alias.

**A**C Foss. ibid. existent. adtunc et ibid. cum ligonibus bipaliis foderunt, plana- verunt, et impleverunt, ad grave dampnum, &c.

Ditches  
cast down.

Alias.

**C**lausum, &c. injuste freger. et intraver', et sex acras Tritici adtunc et ib. crescent. valoris, &c. de bonis et catallis W.H. præd', adtunc et ibid. in- vent', injuste, riosè et rontosè messuerunt, falcaverunt, et asportaverunt, ad grave dampnum, &c.

Cutting  
and carry-  
ing Corn.

Alias.

**Q**uoddam Clausum vocat. &c. cujusd. R.T. Armig. freger. et intraver. ac herbas ipsius R.T. adtunc et ib. crescent. cum quibusdam averiis non so- lum depast. fuer. conculcaver. et consumpser. sed etiam præd. clausum cum equis et aratro araver. et subvert. ad grave damnum, &c.

Trethals,  
&c.

Alias.

**D**omum cujusdam J.S. apud, &c. freger. & intrav. ac bona et catalla præd. J.S. ad valentiam 10 l. in domo sua præd. adtunc invent. riosè ceper', spoliaver. et asportaver. ac cistas ipsius J. S. in domo sua præd. tunc existent. riosè freger. & sex cochlear. argent. ad valentiam 40 s. de bonis et catallis ipsius J. adtunc & ibid. invent. riosè ceper. & asportaver. ac hordenm ipsius J.S. tunc & ibid. in horreo suo invent. riosè ceper. et asportaver. ad grave damnum, &c.

House bro-  
ken, and  
Goods ta-  
ken away

As for the Certificate (which ought to be made to the King and the Council, in case that by this inquiry the truth of the fault and Riot be not found) such Certificate may be done in English by way of a Letter,  
com.

Certificate

compreheuding the truth of the whole matter, with the certainty of the time, place, and other circumstances of the Fact or Riot, together with the certainty of the names of the Rioters ; as also of the names of such who by maintenance, embracery, or otherwise, were any impediment to the finding thereof, with their several misdemeanors : which Certificate or Letter is to be directed and sent by the said Justices of Peace and Sheriff, or Under-sheriff, into the Star-chamber or Kings Bench, &c. within one moneth. See *antea*, tit. *Riots*.

A Traverse to an Indictment of a Riot, and the Record thereupon.

*Camab.*  
The Style  
of the  
Sessions.

The In-  
dict-  
ments.

Proces  
ad respo-  
ndent.  
Traverse.  
Jury.

Day gi-  
ven.

The Ver-  
dict.

The  
Judg-  
ment.  
Cip. pro  
Fin.

Ponunt se  
in miseri-  
cordiam  
Regis.  
Fino assen-  
sed.

*Alias*, sc. ad Sessionem Pacis tentam apud Castrum Cantab. in Com. prad. die Martis proxim. ante Festum S. Matthæi Apostoli, anno regni Dom. nostri Caroli, Dei gratia, Angliæ, Scotiæ, Franciæ et Hibern. Regis, Fidei Defensor. &c. 18 coram A.B.C.D, et aliis sociis suis Fusticiar. dict. Domini Regis ad Pacem in Comitatu prad. conservand. necnon ad divers. Felon. Transgr. et alia malefacta in eod. Com. perpetrata audiend. et terminand. assign. per sacramentum duodecim Furator. extitit presentatum, quod J.L. de, &c. R.M. de, &c. et T.L. de, &c. cum diversis aliis ignotis malefact. et Pacis dicti Domini Regis perturbator. modo guerrino arraiat, uniti et assemblati, vicesimo die Julii, in noct. ejusdem diei, ann. &c. vi et armis, viz. baculis, gladiis, clypeis, pugionibus, falcastris, et aliis armis, tam invasivis quam defensivis, apud C, &c. riosè et rontosè fregerunt et intraverunt, et octo plaustra fæni ad valent. &c. ad tunc et ibid. existent. de bonis et catallis dicti D. ad tunc et ibid. injustè et illicitè ceperunt et asportaver. contra Pacem dicti Dom. Reg. &c. & contra formam Stat. inde editi et provisi ; per quod precept. fuit Vic. Com. quod non omitteret, &c. Posteaque, sc. prad. die Martis prox. ante Festum S. Matthæi Apostoli, anno 18 supradicto coram pref. Fustic. venerunt prad. J.L.R.M, et T.L. in propriis personis suis, et habit. audit. Indict. prad. separal. dicunt, quod ipsi non sunt inde culp. et ad hoc ponunt se sup. Patriam, et A.M, qui pro Dom. Reg. in hac parte seq. similit. &c. Ideo veniat inde Furata coram Fust. dict. Dom. Reg. ad Pacem in Com. prad. conservand. assign. &c. ad Sessionem Pacis apud G, &c. die Martis prox. post Epiphaniam Dom. tunc prox. futuro tenend. et qui, &c. ad recogn. &c. quia tam, &c. Idem dies datus est tam pref. A.M, qui sequitur, &c. quam pref. J.L, R.M, et T.L. &c. Ad quas quidem Sessiones tent. apud G, prad. in Com. prad. die, &c. coram dict. T.P, G.N, et H.P, Milit. et sociis suis Fust. dict. Dom. Reg. ad Pacem in Com. prad. conserv. necnon ad divers. Felon. Transgr. et alia malefacta in eod. Com. perpetrata audiend. et terminand. assignat. venerunt tam pref. A.M, qui seq. &c. quam pref. J.L.R.M, et T.L, in propriis personis suis ; et Furator. prad. per Vicecom. Com. pradict. ad hoc impanellati et exacti, viz. J.F, J.G, &c. similiter venerunt ; qui ad veritatem de premiss. dicendam triati et jurati, dicunt super sacramentum suum, quod prad. J.L, R.M, et T.L. culpabiles sunt, et eorum quilibet culpabilis est, de Transgress. Contemptu et Rioto prad. Indictamento pradict. superius specificatis, modo et formâ prout superius vers. eos supponitur. Ideo consid. est per Curiam, quod prad. J.L, R.M, et T.L. capiantur ad satisfaciend dict. Dom. Reg. de Finibus suis occasione Transgress. Contemptus et Riota prad. Qui quidem J.L, R.M, et T.L. ad tunc et ibid. present. in Cur. petierunt se ad Finem cum dict. Dom. Rege occasione prad. admitti : Et inde ponunt se separat. in misericord. Dom. Regis. Et assessatur Finis ejusd. J.L. per Fust. prad. ad tres lib. sex solid. octo denar. et Finis ejusdem R.M. assessatur ad vigint. solid. & assessatur Finis ejusdem T.L. ad quinque libr. bone et legalis moneta Angliæ, ad opus et usum dicti Dom. Reg.



I have inserted this former Precedent, for that it discovereth much matter worthy the Justices observation.

*Indictments.* Chap. CLXXXIV. V. 131.

For the form of Indictments in cases of Forcible Entry and Riots, I have here before set you down certain Precedents; nevertheless for that these Indictments be the chief foundation whereupon the whole business and Trial is after to be grounded and built, I thought it not amiss to observe here these few general rules, as well concerning the matter as the form of these and all other Indictments or Presentments to be taken before the Justices of Peace.

First, in these Indictments of Forcible Entry and Riots (as also in all other Indictments of Felony or Trespasses) it is good to say, *Against the Peace*, or other words to that effect.

Lamb. 484. 17H. 8.c.8. Also these words, *With Force and Arms, to wit, with Swords, &c.* are not of necessity, yet it is good to use them, especially if the circumstances of the Fact do require them; for these circumstances do either aggravate or diminish the Offence. *Stamf. 94.*

But these words [with Force and Arms] are needless in an Indictment of Forcible Entry, because they are implied in the word Force.

Yet note, that in all the Indictments of Treason, Murther, Felony, or Trespasses, these words [with Force and Arms] are necessary to be put in: (Otherwise it seemeth of Offences which are against the Peace only, as Conspiracies, Deceits, Slanders, Escapes for Debt, and the like.) *Finch.*

Co. 4. 48. Also in Indictments found upon Statutes it is not needful, nay it is not safe to recite the Statute at all: for as the recital is not necessary, so the mis-recital thereof in the matter, or in the year, day, or place, is fatal to the Indictment, and maketh it void. But it is safe and sure to draw the Indictment with this Conclusion, *ſc.*

Co. 4. 84. Dyer 363. Against the form of the Statute in such case made and provided, (if the Indictment be founded upon the Statute:) or, against the form of several Statutes in such case made and provided, (without naming any special Statute, where many Statutes do concern one Offence) *Crom. 104.*

Plo. 1 & 79. Yet the Offence against the Statute must be certainly described in the Indictment, and the substance and material words in such Statute must be fully set down therein. *Plo. 1. et 79. Lamb. 485. Co. L. 98. b.*

Lamb. 463 &c. Br. Indictments 6, 24, 34, 46, & 47. Stamf. 96. Also all Indictments and Presentments (being in the nature of Declarations for the King against the Offenders) ought to contain certainty, and shall not be supplied or maintained by implication, intendment, or argument, *Co. 5. 120. Plo. 84. 122.* and therefore six principal things be most commonly requisite in all Presentments before the Justices of Peace. *viz.*

1. The Names and Surnames, as well of the parties indicted, as of the parties offended; with the addition of the Degree, Mystery, and the Dwelling place of the party indicted, (*ſc.* both the Town, and County.)

Yet in some cases an Indictment, that he did procure unknown persons, or that he did take the Goods of an unknown person, &c. or the like, may be good. See *plus Lam. 470, 476. Br. Indictment 6, 10, 11. Dyer 99. et Plo. fol. 85. b.*

2. The

2. The Time, *sc.* the day and year when the Offence was done.
3. The place, *sc.* the Town and County where it was done, as at *B.* Br. Indictment  
24.41.42.  
Lamb. 478
4. The Name or quality of the thing in which the Offence is committed: *viz.* of dead things it may be the Goods and Chattels, expressing them certainly; of live things, Horse, Ox, Sheep, &c. but not Goods and Chattels. So of Entry, &c. to express certainly whether it be House, Land, Meadow, Pasture, Wood, &c.
5. Also the value or price of the thing is commonly to be set down to aggravate the fault.
6. The Manner of the fact, *sc.* the manner and nature of the Offence; Lamb.  
480. as whether it be Felony, or Trespass, or penal Statute, &c. See *Lamb.* 480. *Br. Indict.* 7. 36.

And yet for the form of Indictments the Jury are not strictly tied thereunto, (*sc.* to the day, year, or place, &c.) but chiefly to the manner of Fact. *Vide hic antea.*

Verity.

Also Indictments ought to be framed so near the Truth as may be, and the rather, for that they are to be found by the Jury upon their Oaths. *Co.* 9. 119. *Plo.* 84.

Yea an Indictment being *veredictum, id est, dictum veritatis*, and a matter of Record, ought to set forth all the truth that by Law is requisite; for *de non apparentibus et non existentibus eadem est ratio*: And every part of the Indictment material ought to be found by the Oath of the Jurors, and is not to be supplied by Averment; otherwise the Indictment will be insufficient.

But false Latin shall not make void an Indictment. *Co.* 5. 121.

And to this purpose note, that false Latin may be said to be of three sorts

First, words of Art, being words significant allowed by our Law, and known to the Sages of the Law, though not allowed by the Grammarians, not having the Countenance of Latin; as *Messuagium, Toftum, Gardin, Bruera, Muredred, Burglariter, Felonicè*, &c. these and the like are words of Art, and are allowed in the Law; yea the Civilians and Physicians do use the like, and every Science have their *vocabula artis*.

The second sort are false writing or incongruous Latin, as *viginti* for *viginti*, *septinginti* for *septinginti*, *presato* for *presato*, &c. These two former sorts shall not avoid or make void any Indictment, Grant, or Deed.

The third sort are words insensible, especially if the words of Art are written insensibly or falsely; as *Murdredum* for *Murdrum*, *Burgariter* for *Burglariter*, *Feloniter* for *Felonicè*. These words *Murdredum*, *Burgariter*, and *Feloniter*, (being no Latin words, nor allowed by Law as words of Art) if they shall be in any place or point material, they do make void the Indictment: except where such words insensible be superfluous. See *Co.* 4. 39. 42. & 10. 133.

And yet *quare*, for these words have the countenance of those other words of Art, and do shew the Court sufficiently what is thereby meant, and seem to be onely the false writing of the Clerks, and therefore might be amended in case of Indictment. See *Coke* 10. 133.

## Sessions. CHAP. CLXXXV.

"1. **T**he Sessions of the Peace are a Court of Record holden before § 1.  
 two or more Justices of the Peace, whereof one is of the *Quo-Description*  
*rum*, for execution of the Authority given them by the Commission  
 of the Peace, and certain Statutes and Acts of Parliament.

"2. The Sessions of the Peace were anciently uncertain and undeter- § 2.  
 mined as to the times, for that so few persons being in Commission, *Times*  
 as 4 or 6, and those for the most part men of Law, they thought it  
 burthenfom to attend; and therefore 36 E.3.12. a Law was made,  
 that in the Commission of the Peace exprefs mention should be made,  
 that the said Justices make their Sessions four times in the year, viz.  
 one Sessions within one Week after the Epiphany; the second within  
 the second week of Lent; the third between the Feasts of Pentecost  
 and S. John Baptift; the fourth within eight days of S. Michael. But  
 that course proving inconvenient, by the Statute of 12 R.2.c.10. it is  
 ordained,

"3. The Justices shall hold their Sessions in every Quarter of the  
 year at the least, and that by 3 days at the least, upon pain to be pu-  
 nished by the discretion of the Kings Council. And because those  
 Times were uncertain, it is ordained,

"4. By the Statute of 2 H.5.4. the Justices of Peace shall make their  
 Sessions four times in the year, viz. in the first week after the Feast of  
 S. Michael, the first week after the Epiphany, the first week after the  
 close of Easter, and the first week after the Translation of S. Thomas  
 the Martyr; and more often if need be. And because the Penalty  
 and Danger of every Justice in Commission for not appearing there  
 was by the said Statute of 12 R.2.c.10. to be punished at the discreti-  
 on of the Kings Council, the Justices of the one Bench and the other,  
 and Serjeants, were exempted herefrom by the said Statute, as also  
 by the said Statute of 2 H.5.4.

"5. But in as much as the Kings Court sitting in the Term time did  
 frequently call before them the Inhabitants of the County of Middle-  
 sex, and thereby most of the business in that County was dispatched,  
 and yet the Justices of Peace were compelled to hold their Sessions four  
 times in the year, to avoid Penalties of former Statutes. By the Sta-  
 tute of 14 H.6.c.4. it is provided, that the Justices of Peace in Mid-  
 dlesex be discharged of these Penalties, provided they hold their Ses-  
 sions twice a year, and oftener if need be, for Forcible Entries or Ri-  
 ots. But it seemeth the Justices of Peace may yet hold their Sessions  
 four times in the year if they see cause, as formerly they might have  
 done: and if they do hold them but twice a year, yet thole times  
 they hold them at, must be some of the times mentioned in the Sta-  
 tute of 2 H.5.4. for they are such times as were judged most conve-  
 nient for the ease of the Subject.

"See more touching the times of these Sessions before, chap. 4. sect. 4.

"As to the Place, there is no determination thereof by any Statute § 3.  
 Law: but certain it is, they must be holden in some place within the *Place*,  
 County for which they are holden, for that the Justices of Peace their  
 Authority is so circumscribed. And therefore if the King shall make  
 a place within a County a County of it self, and give them all Privi-  
 ges of Jurisdiction, it will not be safe for the Justices of the ancient  
 County to hold their Sessions there, unless the King by his Letters Pa-  
 tents



"tents reserve such Power. But if a place within the County be incorporated by the King, and Justices be there appointed, yet the same remains still parcel of the County, and the Justices of the Peace of the County may hold their Sessions there, but may not intermeddle with matters arising there, saving such as happen in their Sessions, or with relation thereunto; for the making such Corporation, and giving them such power, carries with it an exclusion of other Commissioners to be appointed by the King, as to matters arising in such Corporation, so long as such Corporation execute their Authority duly and justly. But in case of any great miscarriage in, or default of, the execution of Justice there by such Incorporation, as their Liberties may be seized, and restored to the Crown by a *Quo Warranto*; so is there notwithstanding such Grant by construction of Law left in the King, a Power to provide for the execution of Law and Justice there, and he may grant a concurrent Commission to worthy and able persons, who shall see Justice there done. And such Power as it is honourable for the King, so it is safe for the Subject.

"And although the place be not otherwise then as aforesaid by any Statute Law determined, yet may the Common Law have some influence on such Authorities and Delegated Powers, to confine them to what is reasonable and safe: and therefore could it be supposed that Justices of Peace would appoint their Sessions at a place known publickly, and to them too, to be infected with the Plague, or on the Confines of a County, or near some publick dangers by Enemies or otherwise; and their so doing be accompanied with other circumstances of Wilfulness or worse; such Justices would for the same be punishable by Information and Fine in the Kings Bench.

§ 4.  
Two Places.

"Mr. Lambert puts a case from Mr. Marrow, that if two or more Justices appoint the Sessions to be holden in one Town, and so many more appoint a Sessions in another Town the same day, and holds; they may be so held, and that the Presentments in both are good; but that Appearance at one is a discharge of Service at the other. But with his favour it may well be questioned whether they are not both void; for they make two Courts of that which ought to be entire and but one: for I do not find the Justices are required or enabled to hold more then one Sessions at a time; and so their Authority being equal, and seeing no preference can be made by the priority of Time, or nature of the Service, they may be taken to be both void. However certainly the Justices, by whose forwardness such Division happens, or on whom such miscarriage is chargeable, on consideration of the circumstances, of the matter, are punishable for the same by Information and Fine, or putting out of Commission, as the cause shall require.

§ 5. "So also (which is another case put by Mr. Lambert) if the Justices appoint a Sessions in one Town, and hold it then in another, without timely notice of their alteration of such appointment, it is punishable in them, for it tends to the hinderance of the service, and trouble and charge of the Subject.

"These Sessions may be and are usually warned by a Warrant under the Hands and Seals of two, or more Justices of the Peace, *Quorum unus*, which may be thus.

§ 6.  
Precept.

"G. H. Mil. & R. C. Arm. *quo Jus. Dom. Regis ad Pacem in Com. S. conservand. necnon ad divers. Felon. Transgr. & alia malefacta in dicto Com.*

"Com. perpetrata audiend. & terminand. assignati. Vic. ejusdem Com. salut.  
 "Ex parte dicti Dom. Regis tibi precipimus, quod non omittas propter aliquam  
 "libertatem in Balliva tua, quin eam ingrediaris, & venire fac. coram nobis,  
 "vel sociis nostris fuis. Pacis, &c. (tali die, &c.) prox. futuro, apud E. in  
 "Com. prad. tam 24 probos & legales homines de quolibet Hundredo in Balli-  
 "va tua, quam 24 Milites et al. probos & legales homines de Corpore Com.  
 "tui (tam infra Libertates quam extra) quorum quilibet habeat 40 s. terrar.  
 "& tenem. liber. per an. ad minus, ad inquirend. tunc & ibid. super hiis qua  
 "ex parte dicti Dom. Regis eis injungentur. Scire facias etiam omnibus Co-  
 "ronatoribus Com. tui, Seneschall. Constab. Subconstab. & Ballivis Liberta-  
 "tum, infra Hundreda & Libertates prad. quod sint tunc ibi ad faciend. &  
 "perimplend. ea que ratione Officiorum suor. facienda fuerint. Proclamari  
 "praterea facias per totam Ballivam tuam (in locis idoneis) prad. Sessionem  
 "Pacis ad diem & locum prad. fore tenend. Et tu ipse tunc sis ibid. ad faci-  
 "end. & exercend. ea que ad Officium tuum pertinent. Et habeas ibi tunc tam  
 "nomina Furat. Coronator. Seneschall. Constab. Subconstab. & Ballivor. prad.  
 "quam hoc Precept. Dat. sub sigillis nostris apud D. in Com. prad. 16 die  
 "Mar. anno regni dicti Dom. nostri Regis Caroli Secundi, &c.

"The Persons that ought to appear at these Sessions are as follows.

"First, the Justices of Peace. For as a Sessions cannot be held with-  
 "out a competent number; so the business of the Sessions cannot be  
 "well done without their Appearance, not onely in the returning thi-  
 "ther such Recognizances and Examinations as they have taken, and  
 "seeing the parties prosecuted and convicted, or acquitted of the crimes  
 "charged on them; but also for deciding and determining such Diffi-  
 "culties as shall arise, and also to give information touching persons  
 "and things that fall within their Knowledge respectively; for *In the*  
*multitude of Counsellors there is safety.*

"2. The Custos Rotulorum, who by virtue of his place hath the custo-  
 "dy of the Rolls of Sessions, ought to be there by himself or his Depu-  
 "ty, who is the Clerk of the Peace.

"3. The Sheriff by himself or his Deputy, to receive the Fines, to  
 "return Jurors, to execute Process, and what else to his Office doth ap-  
 "pertain: for by virtue of the Commission he is commanded to be at-  
 "tendent on the Justices of Peace at all times, especially in Sessions.

"4. The Constables of Hundreds ought there to be, and all other  
 "Officers to whom any Warrant hath been directed in order to make  
 "Return thereof.

"5. The Gaoler, to bring thither such as have been sent by *Mitti-*  
*mus* to him, there to remain untill Sessions; and such as are sent thi-  
 "ther for Larcenies and such Offences of like nature, of which the Sessi-  
 "ons do usually deliver the Gaol; and to give a Calendar of such as are  
 "in prison, and to receive such as may be there committed for any con-  
 "tempt or offence.

"6. The Governor of the House of Correction, to give in a Calendar  
 "of such Rogues and disorderly persons as have been committed to his  
 "custody, and an account of them; or in default thereof he is finable  
 "by 7 *Fac. 4.*

"7. All Jurors returned by the Sheriff by virtue of the said Pre-  
 "cept.

"8. All persons bound by Recognizance to answer, or to prosecute  
 "and give evidence.

"9. All Bailiffs of Hundreds and Liberties, in respect they are bound to give an account of all Sessions Procefs.

"10. All Coroners, &c.

"That the Justices of Peace are compellable to appear at the Sessions of the Peace is out of doubt; for without their appearance the Sessions cannot be holden. And in this case no one is more bound than another to attend, unless some great men and men of the Law, who are exempted by 12 R.2.10. & 2 H.5. 4. and those Statutes requiring the Sessions to be held. For default thereof all persons in Commission (unless exempted by Statute) are equally punishable; and if two, three, or more, shall hold the Sessions, why the rest should not appear to perform the duty, and to bear the burthen, or neglecting should not be punished, there can be no reason given. And therefore I conceive, 1. That such as do not appear are within the danger of 12 R.2.10. whereby for defaults by them in not holding the Sessions, or not so long as is thereby appointed, they are to be punished by the Kings Council in their discretion; which whither it be the Kings Privy Council, or the Kings Learned Council, i.e. the Judges of the Law, or who else it be, 'tis not for me to determine; for that every one that is absent is guilty of not holding the Sessions. Or, 2. Such Justice of Peace may be indicted or informed against in the Kings Bench for such default, it being a neglect of his Office, and fined for the same; especially if those Omissions are frequent and usual. Or, 3. There is great reason to put him out of the Commission of the Peace for such neglect. Or, 4. I see no reason but the Justices of Peace in Sessions may proceed by Information or Indictment against such Defaulter, and proceed to Fine or Imprisonment: and the reason given by Mr. *Lambert* (*lib. 4. p. 3. fol. 383.*) I think will not hold here; for what they do in Sessions they do as a Court, and not as particular persons; as was lately holden in the case of Sir *Nicholas Stoughton* in the Kings Bench, who being a Justice of Peace in *Surrey*, was required by the Court of Sessions there for to find Sureties for the Good Behaviour, upon the complaint of one *Gilham*, for threatening a Juror for presenting a matter there, and for not giving Security was committed: and this was resolved to be well done for the reason aforesaid; which reason to my observation will also hold in case of any neglect or miscarriage against the Court of Sessions, even by a Justice of Peace; or otherwise against any Law whereof they as a Court have cognizance.

"The Jurors not appearing according to Summons are punishable by loss of Issues, which usually make part of the Estreats of Sessions. As also the Constables by Fine to be set on them.

§ 9.  
Holding a  
Sessions.

"The Justices being met to hold the Sessions, the usual course is with three O Yes to proclaim the Sessions, and then read the Commission of the Peace; which done, to call the Constables, and out of them to make one or more Juries for Grand Juries or Juries of Presentment; who being sworn, the charge is given them to call the Recognizances, especially such as are to prosecute and give Evidence, that so Bills may be drawn and prepared. To which purpose an able Clerk is requisite, that so Labour, Time, and Charge may not be spent in vain; which Bills being ready, the parties bound over for that purpose are sworn to give Evidence upon the Bills: and the course is to bid the Evidence go with the Jury, where they



“they consider of the matter of the Bill, and either find it or not find it, as the Evidence appears to them credible and sufficient, or otherwise, and then they return it; but it may be very reasonable; if the matter be weighty or difficult, and the Jury be not very able; or the Prosecution be too slack or over violent, to hear the Evidence given in Court, that so the Jury may be the better assisted in doing their duty.

“Whilest the Juries be abroad, the usual way is to hear Motions touching Settlements of poor persons, and other things relating thereunto; and to call persons bound over to the Peace or the Good Behaviour: but it may not be best to discharge them untill the end of the Sessions, for fear persons may come to prefer Bills against them, or to complain of them when the Birds are flown.

“And because the Arraignment and Trial of Prisoners is a great part of the business of Sessions, I will take notice of some parts thereof, and Proceedings thereupon.

“Towards the end of the Sessions, when it appears what Bills are come in against the Prisoners, the Gaoler being called to set his Prisoners to the Bar, and the Crier being called to make a Bar, that is, to dispose of the company that a way be made open from the Court to the Prisoners, that the Court, Jury, and Prisoners may see each other; one of the Prisoners is called to, *A.B.* Hold up thy Hand; (this is done to notify him to the Court, the Jury, and standers by.) Thou *A.B.* standest indicted by the name of *A.B.* of, &c. (name him as he is named in the Indictment, &c.) for that thou, or that thou with others, &c. (and so recite the whole Indictment in English; which done) How sayst thou *A.B.* art thou guilty of this Felony and Burglary, or Felony and Robbery, or Felony and Murder, (as the case is) whereof thou standest indicted, or not guilty? If the Prisoner say Guilty, then the Confession is recorded, and no more done as to him till Judgment; but if he say Not Guilty, then the Clerk says, *Culp prift*, (i.e. Guilty already.) How wilt thou be tried? It is usual to say, By God and the Countrey; but if the Prisoner stand Mute, and will not plead, 'tis best to ask him three or more times, and to tell him the danger of standing Mute, and the grievousness of the Judgment, *de peyne fort & dure*: and if yet he will stand Mute, nothing more can be done concerning him, but to record it. But if he plead Not Guilty, so record it; and in like manner all the rest of the Prisoners. And if two, three, or more, they being called to severally thus; You *A.B.* hold up thy Hand; You *C.D.* &c. and so the rest. Then say, You *A.B.* by the name of *A.B.* of, &c. and You *C.D.* by the name of *C.D.* of, &c. and so the rest; for that you, &c. and so recite the substance of the Indictment. Then call to them severally to plead, &c. (The word Arraign cometh from the French word *Arranger*, *ordine collocare*, *quia rei ordine vocantur ad Rostra seu Cancellis, qua nos Barram vocamus*, saith Skinner.) Which done, the Prosecutors are called on the Recognizances to give evidence; which done, the Jury are called on their Panel, (for a Return cannot be made upon a *Venire facias* made the same Sessions, and a Trial had thereupon in the same Sessions, as is held 22 *E.4. Fitz. Coron. p. 44. & Stamf. l. 3. c. 5. f. 156.* in case of Justices of Peace in their Sessions; much less can they nominate or direct the immediate return of by-standers. But otherwise it is in case of the Justices of Gaol-delivery: therefore consider whether a Trial can be had of a Felon the same Sessions he pleads, unless he con-

§ 10.  
Arraign-  
ment.

"sent thereunto) thus, You good men that are returned and impa-  
 "nelled, to try the Issue joyned between our Sovereign Lord the King  
 "and the Prisoners at the Bar, answer to your names. Which done,  
 "and they appearing a full Jury, make Proclamation thus ; If any man  
 "can inform the Kings Attorney, or this Court, of any Treasons, Mur-  
 "ders, Felonies, or other misdemeanors against *A.B.* &c. the Prisoners  
 "at the Bar, let them come forth, for the Prisoners stand upon their  
 "Deliverance. Then say to the Prisoners, You Prisoners at the Bar,  
 "the persons that you shall now hear called, are to pass upon your se-  
 "veral Lives and Deaths ; (or if it be Petit Larceny, are to pass on your  
 "Trial ;) if you will challenge them, or any of them, you must chal-  
 "lenge them as they come to the Book to be sworn, and before they be  
 "sworn. Then call the Foreman of the Jury, and say to him, Lay your  
 "Hand on the Book, and look upon the Prisoner ; You shall well and  
 "truly try, and true deliverance make, between our Sovereign Lord the  
 "King and the Prisoner or Prisoners at the Bar, whom you shall have  
 "in charge : you shall true Verdict give according to your Evidence.  
 "So help you God. Then call the second, and swear him in like man-  
 "ner, and so to 12 ; and neither more nor less must be sworn. Then  
 "count them to 12 and say, You good men that are sworn, you shall  
 "shall understand, that *A.B.* now Prisoner at the Bar stands indicted,  
 "for that he ; or if more then one in one Indictment, that they, &c.  
 "And having recited the Indictment say, to which Indictment he hath  
 "pleaded Not Guilty, and for his Trial hath put himself upon God and  
 "the Countrey, which Countrey you are ; so that your charge is to  
 "inquire whether he be guilty of the Felony, or Petit Larceny, or Felony  
 "and Burglary, whereof he stands indicted, or not guilty : if you  
 "find him guilty, you shall inquire what Goods and Chattels he had  
 "at the time the said Felony and Petit Larceny was committed, or at  
 "any time since : or if it be for Felony, then what Goods and Chattels,  
 "Lands and Tenements, he had at the time of the said Felony commit-  
 "ted, or at any time since. If you find him not guilty, you shall inquire  
 "whether he did fly for it ; if you find he did fly for it, you shall in-  
 "quire what Goods and Chattels he had at the time of such flight. If  
 "you find him not guilty, and that he did not fly for it, you shall say so  
 "and no more ; and so hear your Evidence. Then call the Witnesses,  
 "and swear them one by one thus ; The Evidence that you shall give  
 "on the behalf of our Sovereign Lord the King against *A.B.* Prisoner  
 "at the Bar, shall be the whole truth, and nothing but the truth. So  
 "help you God. And the Evidence being given, let another Prisoner  
 "to the Bar and say, You shall likewise understand, that *C.D.* stands  
 "likewise indicted before you this time, for that he, &c. (and so recite  
 "the Indictment) for which he hath been arraigned, and hath pleaded  
 "thereto Not Guilty, and for his Trial hath put himself upon God and  
 "the Countrey, which Countrey you are ; you are therefore to inquire  
 "of him as of your first Prisoner, (that is, where the Offence is of the  
 "same degree ;) and so hear your Evidence, &c. After the Evidence  
 "given a Bailiff must be sworn to keep the Jury thus ; You shall swear  
 "that you shall keep this Jury without Meat, Drink, Fire, or Candle ;  
 "you shall suffer none to speak to them, neither shall you speak to them  
 "your self, but onely to ask them whether they are agreed. So help  
 "you God.

"The Jury coming back within the Bar or near, the Prisoners are  
 "brought to the Bar, call the Jury ; they appearing, say, Set *A.B.* to  
 "the

"the Bar, who being there say, Look upon him, my Masters of the Jury, how say you, is *A.B.* guilty of the Felony (or as the case is) whereof he stands indicted, or not guilty? If they say Not Guilty, bid him down upon his Knees. If they say Guilty, record it, and bid him be taken away. Then say, Gaoler, set *C.D.* to the Bar, &c. and do as before. And when the Verdicts be given say, My Masters of the Jury, hearken to the Verdict as the Court hath recorded it; you say *A.B.* is not guilty of the Felony whereof he stands indicted; you say that *C.D.* is guilty of the Felony whereof he stands indicted; and so onwards for the rest *mutatis mutandis*.

"Then make a Proclamation and say, All manner of persons keep silence whilest Sentence is giving upon pain of Imprisonment. Then set the first Prisoner to the Bar, and give the Sentence; and so for the rest.

"I have been the more particular herein, to shew the great care and solemnity the Law hath in the trial of Mans Life.

"And upon Trials of this nature Council is not to be allowed to the party, unless he can shew to the Court some matter of Law, so that it may appear Council is necessary: but otherwise the Court is to be of Council with the Prisoner, and ought to advise him for his good, and ought not to take advantages too strictly against him. The Court may also receive information from any by-stander, especially a man of Law, who may offer any thing as *amicus Curie*, relating to the trial or manner of it. § 11. Council.

"No Witnesses are to be produced and examined upon Oath against the King, but the Prisoner may offer what Witnesses he pleases, and they shall be examined, but not upon Oath; but ought to be seriously admonished to speak the truth as if they were upon Oath. § 12. Witnesses.

"Although I know it is in many places used to try a man for Felony the same Sessions the Indictment is found; yet it seems to me highly reasonable (if the Prisoner desire it) to be deferred, and shew cause for it that shall be probable to defer it; for that, 1. The Sessions are holden oftner then the Assizes: 2. These speedy Trials seem to be in favour of the Prisoner; and, *Volenti non fit injuria*: 3. If a Traverse upon an Indictment of Nuisance be not triable the same Sessions that it is joyned upon an Indictment of Nuisance or other matter, not valuable with a mans Life or Estate, but a man shall have time to provide for it; much more in matter of Life, where usually the party is in prison, and may well be supposed less able to provide for it, and in the nature of it requires greater provision and consideration. § 13. Trial the same Sessions.

"Many things (according to the Rules and Reason of the Common Law) cannot, or ought not, be done by the Justices of the Peace but at their Sessions; for that the exercising of their great Authority doth require a Court and publick Meeting for the doing thereof; and by the holding such a Court doth arise out the Authority given them by their Commission for the due execution of it: for the Law requires, that things of great import be solemnly done, as the matters of Trial of Offenders. § 14.

"Many things there be, that by several Statutes yet in force cannot be executed but onely in the Sessions after Easter, or some other particular Sessions; as the taking the Accounts of the Treasurers for maimed Souldiers and Charitable Uses, and the appointing new Treasurers, by the Statutes of 43 *El.* 3. and 43 *El.* 2. as it seemeth, must be done in Easter Sessions. And so also must the Rates of Wages by the



" Statute of 5 *El.* 4. be made and published in Easter Sessions yearly, or  
 " within six weeks after; and every Justice of the Peace not present  
 " thereat (being not let by sickness) shall forfeit 10 *l.* with divers others  
 " of like nature.

" Divers other things there be that may be done in any, but must  
 " be done in some Sessions, and not out of the same; as an Ap-  
 " prentice ill used by his Master must be discharged by 4 Justices of  
 " Peace in Sessions under their Hands and Seals, by 5 *El.* 4. Badgers  
 " must be licensed in open Sessions under the Hands and Seals of 3 Ju-  
 " stices of Peace, *Quorum unus*. Every person having any Office or Place  
 " of Trust of the Kings Gift or Grant, shall in the next Sessions after his  
 " being admitted into that Office, after receiving of the Sacrament, in  
 " open Sessions (between the hours of 9 and 12 in the morning) prove  
 " the doing thereof by two Witnesses, and take the Oaths prescribed by  
 " 1 *El.* 1. and 3 *Fac.* 4. and make a declaration against Transubstantiation,  
 " according to 25 *Car.* 2. And many other particulars there be of  
 " that nature.

§ 15.  
Private  
Orders.

" This also I would observe, that the manner in some Counties is to  
 " make Orders in the Chamber after the Adjournment of the Sessions,  
 " touching several matters of great importance; which is a very ill  
 " usage, and contrary to the Honour and Dignity of the Employment:  
 " and such doings are for the most part to promote some private design,  
 " and to serve turns and by-ends, but not the publick, and are neither  
 " valid nor safe should they be complained of.

§ 16.  
Reversing  
Orders.

" Another thing censurable in our Justices of Peace is, their over ea-  
 " sie discharging and setting aside Orders made in open and publick Ses-  
 " sions; whereas be it an Order that is made by them upon an Appeal  
 " from the Order of other Justices, as from the Order of two Justices of  
 " Peace in case of Bastard Children, by and upon 18 *El.* 2. and in like  
 " manner be it an Order made upon Appeal from the Order of two Ju-  
 " stices upon 14 *Car.* 2. touching Settlements: in these cases the same  
 " nor any other Sessions can repeal these Orders, according to *Pridge-*  
 " *ons* Case. Nay, be it an Order made by themselves, intended to be  
 " final and made absolute, without any time to shew cause; I see not  
 " how another Sessions can repeal it: for such Order is in the nature of  
 " a Judgment on record, as all things are that are done in Sessions, and  
 " may be reversed by a superiour Court, but not by themselves.

§ 17.  
Wages.

" By the Statute of 14 *R.* 2. c. 11. none above the degree of a Knight  
 " shall take the Kings Wages for Service at the Sessions, nor above 8  
 " Knights at one time. *Quere* whether a Knight shall take Wages,  
 " whereas a Bannerett shall not, for so is the Original, not a Baronett.

§ 18.  
*Estreats*.

" The *Estreats* of Sessions are a great part of the Justice of Peace his  
 " duty; and they are to be doubled, and one part thereof unto the Ju-  
 " stices hands is to be delivered to the Sheriff to levy them by, and there-  
 " out to pay the Justices of Peace their Wages by the hand of the She-  
 " riff, by Indenture between them to be made; and the Justices Names  
 " are to be put into those Indentures, that the Sheriff may know whom  
 " to pay, and for whom to have Allowance made. 14 *R.* 2. c. 11.

*Jurors and Challenges to them.* CHAP. CLXXXVI.

“THIS is that happy way of Trial, that notwithstanding all shakings of State and revolutions of Times, hath been continued from time beyond all memory to this present day; the beginning whereof no History specifies, it being contemporary with the foundation of this State, and one of the pillars of it both as to Age and Consequence: that Maxim, *Ad questionem facti respondent Furatores*, being as ancient and fundamental as that other, *Ad questionem Furis respondent Judices*; the one being as liable to be controlled by a Writ of Error as the other by an Attaint, both essential to the Justice of this Nation. And although Jurors are in other things subject to His Majesties Commissioned Judges, yet are they not so in point of Judgment, which after some pangs and throws was happily asserted in the case of the *Habeas corpora* prosecuted by *Busbell* and others, by a sacred and nigh a unanimous Opinion of all the Judges.

§ 1.  
*Trial by Jurors.*

“This Trial is the birthright of every Subject of *England*, and is put to him by way of question, How wilt thou be tried? Which is thought to be so just and equal for him to chuse, that the Waiver of it is revenged with *paine fort & dure*; no punishment being judged too severe for one that refuseth so just a Trial.

“So happy is our condition, that every Englishman (in matters of Crime and Forfeitures) passes a double Jury; neither to my apprehension doth the course and care of the first Inquest differ from the last, but onely in consequence brought on by custom, the Indictment being as much found to be true by the one as the other.

“These Jurors are returned by the Sheriff by virtue of a Precept to that purpose, against which at the Common Law both the King and the party had two lawful Challenges, one peremptory to the other upon cause shewed.

§ 2.  
*Challenge.*

“But forasmuch as Life, Liberty, and Estate are all at stake in cases of Felony, it is provided by 33 *E.1.* that the King shall not challenge peremptorily, but must shew his cause, which shall be inquired and tried if true as alledged, and if found otherwise shall be rejected.

“Yet the peremptory Challenge remaineth for the party, although not so amply as at Common Law, according to which he might challenge 35 without cause shewed, and as many more as he could upon cause shew: but now by the Statute of 32 *H.8.3.* this peremptory Challenge is reduced to 20, to challenge peremptorily beyond which number, is to waive his Trial; and to stand unto which is a great offence, and grievously punished in our Law, that person being judged unworthy of Life, whose Innocency is not clear to endure an English Trial.

“The Jurors ought to be fairly impanelled, and duly returned, by the Sheriff or other sworn Bailiff, and not at the nomination of the Juror himself or any other, by 11 *H.4.9.* or else the Indictment is void by that Statute. And they are to be *liberi & legales homines*: for first they must be *liberi*, not Villains born: 2. *legales*, not convicted or attainted, and so slaves to punishment as well as to their own Vices, and an Outlary in a Personal Action seems to be not onely a good Challenge, but also good cause to set aside the Indictment. *Fones Rep.* 196.

§ 3.  
*Who good Jurors.*

“They

"They must also be sufficient; 1. *Respectu census*, every one must have 40 s. of Lands or Tenements by the year; but for this cause he must be challenged, or else if the party omit to challenge him, the Trial is well made by such a Juror. 2. *Respectu rationis*, he must be no Ideot, Lunatick, &c.

"And because many times by such Challenges to Jurors for want of Freehold upon trials of Offences in Cities, Boroughs, or Towns Corporate, such Trials were deferred; by Stat. 23 H.8.13. it is provided, that every person being the Kings natural born Subject, that useth or enjoyeth the Freedom of such place, and dwelleth there, having in moveables and sub stance to the value of 40 l. clear, may be admitted on such Trials, except Knights and Esquires.

§ 4.  
*Medicus  
lingua.*

"There is a way of Trial also peculiar to Foreiners, called *De medietate lingue*; which ought to consist of 6 English and 6 Foreiners, if so many be in the place; if not, then so many as can be found there: but it matters not whether they be of the same Nation the Prisoner is of, for they may be of any other Nation; and the party must pray it, and shew the matter to the Justices. Yet where persons calling themselves *Egyptians* are to be tried for such their Offence, they are ousted of this benefit by 1 & 2 P. & M.c.4.

§ 5.  
*Indictor.*

"It is also a good Challenge to a Juror, that he was one of the parties Indictors, for having been of that mind that the Prisoner was guilty, he shall not be presumed to change his mind: this is declared by 25 E.3.3. to be good cause of Challenge; for it was so also by the Common Law, and therefore is good cause of Challenge as well in Felony as Treason.

"Many other causes of Challenge there are, as well for the King as the party, which you may find very largely and learnedly handled by Justice Stamford in his Pleas of the Crown, lib.3. c.7. which relate to Criminal matters onely; and a most excellent Scheme you may find touching Challenges between party and party in my Lord Coke, 1 Inst. fol.156. many whereof may by a discerning Reader be easily adapted to this present purpose, and therefore I forbear to mention them.

§ 6.  
*Conceal-  
ments.*

"And because Jurors are too apt to be favourable to their Neighbours or Friends, in not presenting Offences, the Statute of 3 H.7.c.1. hath provided, that Justices of Peace may inquire of such Concealments by another Jury, and punish them by Amercement by their discretions; touching which these things are considerable.

"1. The matters which they may be thus punished for the Concealment of, must be such matters and offences as by the Commission of the Peace or Statutes may be inquired of and presented before such Justices.

"2. It seems by that Statute, that where Inquests have been taken before Coroners, or some particular Justices out of Sessions, yet the Justices of Peace may inquire thereof, for the words are Concealments of Inquests taken afore them or afore others. The like seems to me of Inquests in Leets or the Sheriffs Turn, in matters whereof the Justices of Peace have also cognizance.

"3. Every Juror that shall be impanelled to inquire of such Concealments must have 40 s. *per an.* of Lands or Tenements.

"4. There must be complaint before them made by Bill or Bills of such Concealment, if the word Bill or Bills in that Act do refer unto the Proceedings against such Concealments; or otherwise such Concealments must be in matters that have been complained of by Bill or Bills,



"Bills, and not for not presenting things not so first complained of, but  
 "in not finding Bills drawn up and presented to them to find; for the  
 "words are doubtful.

"5. Such Inquiry of Concealment must be made within the year af-  
 "ter such Concealment.

"6. Such Amercement must be reasonable, although directed to be by  
 "discretion, which must be *sana & legalis*; concerning which Mr. Dal-  
 "ton hath given many sound directions and advices: and see *F.N.B.*  
 "175. in the Writ *De moderata misericordia*.

"7. It seemeth reasonable the Inquest ought to consist of as many  
 "or more as the first Inquest did; for this is a way of attainting a Ju-  
 "ry, which is *criminis accusare, vel suspicione criminis attingere*.

"8. Notwithstanding any trivial complaint, the Justices of Peace  
 "may take or not take such Inquests as they see cause; for it is left to  
 "their discretion by the Statute.

"9. Such Amercement on Jurors for Concealment must be set in  
 "plein Sessions, not *plain* (as I take it) as the printed book is.

"If any Jurors shall either upon an Issue of a Traverse in any thing § 7.  
 "not Felony, or which is Felony, doubt upon the Evidence what the *Special*  
 "Law is, they may (as it seems) give a special Verdict in Sessions as in *Verdict*.  
 "the Courts of Gaol-delivery or Assizes, and that by the Common Law  
 "before the Statute of *West. 2. c. 3.* for that Statute is but declaratory of  
 "the Common Law, *Co. 2 Inst. 425.*

# Trial. CHAP. CLXXXVII.

7 Jac. 1.

"IF any commit in Scotland any Offence, which by the Laws of England § 1.  
 "is or shall be declared or adjudged to be Petty Treason, Murder, *Scotland*  
 "Manlaughter, Felonious burning of Houses and Corn, Burglary, Rob-  
 "bing of Houses by day, Robbery, Theft or Rape, and shall fly into Eng-  
 "land, and be apprehended in the Counties of Northumberland, Cumber-  
 "land, Westmerland, or within the parts or places lying on the North  
 "side of the River Tine called *Bodlingtonshire, Northamshamshire, and*  
 "*Islandshire*, the Town and County of *Newcastle upon Tine*, and Town of  
 "*Berwick upon Tweed*, or Liberties thereof; it shall and may be lawful  
 "for the Justices of Peace in their general Quarter Sessions, or any 4 of  
 "them, upon due examination and pregnant proofs, by Warrant under  
 "their Hands and Seals to remand and send such Offenders into Scotland,  
 "there to receive Trial, &c.

"The Trial of an Offender ought regularly to be in that County § 2.  
 "where the Offence was committed; unless any Statute doth other- *County*.  
 "wise provide, as some do, *viz. 1 & 2 P. & M. c. 4.* and divers others.  
 "But if one steal Goods in the County of *A*, and carry them with him  
 "into the County of *B*, and be there apprehended; he may be tried  
 "and punished for the same in the County of *B*: for in this case *Faci-*  
 "*nus sequitur personam. 1 Fac. 11.* Digamy shall be tried where the party  
 "is apprehended.

"The Trial of Felonies, and of things and offences for which a person § 3.  
 "is notailable, or the party cannot get Bail, but lies in prison, ought *The same*  
 "to as speedy as may be *in favorem libertatis*: and therefore it is usual *Sessions*.  
 "to indict them and try them at the same Sessions. See before in *Sessi-*  
 "*ons*. But in other causes of Indictment for breach of Penal Statutes,  
 "or for Nufances, or for other misdemeanors not made Felony, they can-  
 "not

"not try the cause the same Sessions the Indictment is, as was resolved in *Bampfseeds* case, *Hil. 11 Car. 1. Cro.* where a person was indicted of Extortion, and proceeded against to conviction the same Sessions, and adjudged not good: and so was also resolv'd *Trin. 23 Car. 1.* upon an Indictment for words spoken of the Queen Mother: so likewise of Justices of Oyer and Terminer. But otherwise it is of Justices of Gaol-delivery; and by the case *22 E. 4. Fitz. Coron. 44.* it appeareth, that the Justices of Peace in their Sessions cannot proceed in a cause criminal the same Sessions, especially where the party requires time to be advised.

§ 4.  
Foreign  
Plea.

"By the Statute *22 H. 8. 14.* made perpetual by *32 H. 8.* the Trial against the party indicted shall be in the County where he is indicted for Murder or Felony, notwithstanding any Foreign Plea.

### Judgment. CHAP. CLXXXVIII.

§ 1.  
Woman.

"A Woman convicted of taking Goods above the value of *12 d.* and under the value of *10 s.* or as Accessary to any such Offence, for which a man might have his Clergy, shall for the first Offence be branded and marked in the hand, upon the brawn of the left Thumb, with an hot burning Iron, with a T upon the Iron, openly in Court; and be further punished by Whipping, Imprisoning, Stocking, or sending to the House of Correction, in such manner and for such time (not exceeding one year) as the Judge shall think fit, and then be delivered out of prison. 21 Jac. 6.

"But if she afterwards offend, she is to have Judgment of Death, as she was to have had at Common Law.

"For the Judgment in Treason and Petty Treason, the Justices not meddling therewith, I refer you to the Books, and especially to Mr. Justice *Stamford*, who hath written learnedly and largely of the Pleas of the Crown, *l. 3. c. 19.* and also *Coke tit. Pleas of the Crown.*

§ 2.  
Felon.

"In case of Felony the Judgment is usually pronounced thus; You shall be carried back to the Prison from whence you came, and from thence be had to the place of Execution, and there be hanged by the neck untill you be dead, and the Lord have mercy upon your Soul.

§ 3.  
Petit Lar-  
ceny.

"In cases of Petit Larceny the Justices of Peace may award the party either to be whipped at a Carts tail, or at the Whipping Post, as they shall judge convenient. But Whipping is grown the usual and ordinary punishment; although formerly it was uncertain, and punished by Pilory or cutting off the Ears. *Co. 4 Inst. 218.*

§ 4.  
Altering  
the Judg-  
ment.

"By many Statutes peculiar Punishments are appointed for several Offences, as Pilory, Stocks, Imprisonment, Binding to the Good Behaviour, Stigmatizing, &c. But in all those cases no room is left for the Justices discretion, for they ought to give Judgment, and inflict the punishment in all the circumstances thereof as such Statutes do direct. For if the King cannot alter the entire manner of Execution, as to direct a person to be beheaded that hath Judgment to be hanged; much less can an inferiour Court alter a Judgment and Sentence directed by Act of Parliament. And therefore the course taken up in some Counties, to admit the party indicted for breach of Penal Laws, to submit with a Protestation Not Guilty; and therefore forbear to inflict the Penalty imposed, and so mitigate the Penalty, and is an Offence for which they are punishable: for thereby, 1. The Sentence  
"im-

"imposed by Act of Parliament is quite altered. 2. The mischiefs intended to be remedied go unredressed. 3. Many times the Poor, who are by direction of several Acts to have the Penalty, are thereof defrauded.

*How Justices of Peace may defend themselves against Suits.*

CHAP. CLXXXIX.

7 Jac. 5.

"IF any Action, Bill, Plaint, or Suit upon the Case, Trespass, Battery, or False Imprisonment, shall be brought any where against a Justice of Peace, &c. for any thing done *virtute officii*, it shall be lawful for them, or any other that act in their aid, assistance, or commandment, to plead the General Issue, and to give the special matter in evidence. If the Verdict pass for the Defendant, or the Plaintiff be Nonsuit or Discontinue, the Judge shall allow double Costs. § 1. General Issue.

21 Jac. 12

"Which Statute was to continue but for 7 years, but is made perpetual by 21 Jac. 12. and it is thereby enacted, That all Actions upon that Statute shall be laid in the proper County where the fact was done; and if upon the Trial the Plaintiff shall not prove the fact done in that County where the Action is laid, the Jury shall find the Defendant Not Guilty; and in case of such Verdict, nonsuit, or discontinuance, the Defendant shall have his double costs. § 2. County.

"A Constable may make a Deputy, and may plead the General Issue, and thereby take benefit of 7 Jac. 5. as was resolved *M. 13 Jac. B.R.* Constable.  
*"Phelips contra Winchcombe, Moors Rep. p. 845. Bulstr. part 3. p. 77.*

Clergy. CHAP. CXC.

"WHAT Clergy is, with the beginning and use thereof, see *Hobart Rep. Searle and Williams case p. 288.* § 1. What.

"By the Common Law one committing Sacrilege shall not have his Clergy; *Frustra enim petit auxilium Ecclesie, qui peccat contra Ecclesiam.* § 2. By Common Law.

"Also for High Treason no Clergy was allowed at Common Law, *1 Inst. 150, 336.* but in all other cases the Offender might; and some say in all Treasons but those against the Kings Person.

"By the Common Law every person in Holy Orders might estoons have had the benefit of the Clergy, and so might others also, as it seems by *4 H. 7. 13.* But as to all except those in Holy Orders it is restrained to Once by that Statute; and every person so convicted for Murder to be marked with an M in the brawn of the left Thumb, and for other Felony with a T; and those Marks to be made by the Gaoler in open Court before the Judge. § 3.

"By the Statute of 28 H. 8. c. 1. persons in Holy Orders shall be burnt in the Hand, and used as others be. See 32 H. 8. c. 3.

"And by the Statute of 23 H. 8. 1. 28 H. 8. 1. 32 H. 8. 3. Clergy is taken away in these cases: § 4. Where.

"1. Persons found guilty after the Laws of the Land for Petit Treason.

1 E. 6. 12.

"2. For wilful Murder of malice prepensed or Poisoning.

1 E. 6. 12.

"3. Or for robbing of Churches or Chapels, or other holy places.

"4. Rob-



- " 4. Robbing any persons in their dwelling house, or dwelling place, <sup>1 E. 6. 12.</sup>  
 " or any parcel thereof, the owner or dweller of the same house, his <sup>5 E. 6. 11.</sup>  
 " Wife, Children, or Servants then being within the same, or within  
 " the Precinct thereof, and put in fear or dread by it, or whither they  
 " be waking or sleeping.  
 " 5. Or for robbing any person in or near the High Way. <sup>1 E. 6. 12.</sup>  
 " 6. Or for wilful burning any dwelling house, or Barn wherein  
 " Grain or Corn shall happen to be.  
 " 7. Any found guilty of Abetment, Procuring, Helping, Maintain- <sup>4 & 5 P.</sup>  
 " ing, or Counselling to such Offences. By <sup>25 H. 8. 5. & 5 El. 17.</sup> <sup>& M. 4.</sup>  
 " 8. No person convicted of Buggery shall have his Clergy.  
 " 9. Or of breaking any House by day or by night, and any person be- <sup>1 E. 6. 12.</sup>  
 " ing therein, and put to fear or dread. <sup>1 E.</sup>  
 " 10. Or for the Felonious stealing of Horses, Geldings, or Mares.  
 " But by <sup>1 E. 6. 12.</sup> Clergy was allowed in all other cases of Felony ; <sup>1 E. 6. 12.</sup>  
 " yet since that time Clergy hath been taken away from several per- <sup>2 & 3 E.</sup>  
 " sons : as, <sup>6. 33.</sup>  
 " 11. Such as shall command, hire, or counsel another to commit or <sup>4 & 5 P.</sup>  
 " do any Petit Treason, or Murder, or Robbery in any dwelling house or <sup>& M. c. 4.</sup>  
 " houses ; or to commit or do any Robbery in or near any High Way in  
 " the Realm of *England*, or any the Queens Dominions ; or to commit  
 " or do any Robbery in the Marches of *England* against *Scotland* ; or to  
 " burn any House or Barn having Corn in it.  
 " 12. If any rob any person in any Booth or Tent, in any Fair or Mar- <sup>8 E. 6. 11.</sup>  
 " ket, the Owner, his Wife, Children, or Servant then being therein.  
 " 13. All persons being transported into *England* called *Egyptians*, <sup>1 & 2 P.</sup>  
 " staying here above a moneth. <sup>& M. 13.</sup>  
 " 14. Any person seen or found in the company or fellowship of Va- <sup>5 E. 1. 4.</sup>  
 " gabonds, calling themselves or called *Egyptians*, or counterfeiting or <sup>20.</sup>  
 " disguising themselves by their Apparel, Speech, or Behaviour like <sup>5 El. 20.</sup>  
 " them, and so remaining a moneth at one time or several times.  
 " 15. All persons convicted of the Felonious taking away of Money, <sup>39 El. 15.</sup>  
 " Goods, or Chattels, to 5 s. or upwards, in any dwelling house, or part  
 " thereof, or any Out-house belonging to and used with any dwelling  
 " house, although no person be in the House.  
 " 16. Nor for the Felonious taking of any Money, Goods, or Chattels <sup>8 El. 4.</sup>  
 " from another person privily.  
 " 17. Or he that doth stab or thrust any person that hath not a Wea- <sup>1 Jac. 8.</sup>  
 " pon drawn, or that hath not first stricken him, if the party die within 6  
 " moneths.  
 " 18. Popish Recusants or Schismaticks commanded to abjure, and <sup>35 El. 14.</sup>  
 " do not depart, or do return again. <sup>& 2.</sup>  
 " 19. Or any persons receiving, &c. a Jesuit, Seminary Priest, or other <sup>27 El. 2.</sup>  
 " Priest born in *England*, ordained by any Authority from *Rome*.  
 " 20. Or any convicted or attainted for any Offence made Felony by <sup>3 H. 7. 2.</sup>  
 " <sup>3 H. 7. 2.</sup> viz. taking any Maid, Widow, or Wife of substance in Lands  
 " or Goods, or after marrying her or assenting to it, or defiling and re-  
 " ceiving her, knowing it.  
 " 21. After conviction of Forgery the second time committing that <sup>5 El. 14.</sup>  
 " Offence.  
 " 22. Nor any committing Rape or Burglary. <sup>18 El. 7.</sup>  
 " 23. Exercising Conjuraton or Invocation, whereby any person is <sup>1 Jac. 12.</sup>  
 " killed or lamed.  
 " 24. Nor a Souldier departing without Licence from his Captain. <sup>2 E. 6. 2.</sup>  
 " 25. Nor

- 39 El. 17. "25. Nor a wandering Souldier or Mariner that offendeth against  
 "39 El. 17.  
 22 Car. 2. "26. Or such as steal Cloth from the Tentars.  
 22 Car. 2. "27. Nor such as imbezel His Majesties Stores.  
 22 & 23 Car. 2. "28. Nor such as maliciously maim any person.  
 18 El. 7. "Every person having his Clergy shall be forthwith delivered out § 5.  
 "of Prison, and not to the Ordinary; yet the Justices may detain him  
 "in Prison as a further punishment for any time not exceeding one  
 "year, and shall (notwithstanding his Admission to his Clergy) answer  
 "any other Offences.

Informations. Actions Popular. CHAP. CXCI.

"THE Civil Law hath two sorts of Informers; 1. *Voluntarius*, as our § 1.  
 common Informer. 2. *Necessarius, qui invitatus facit propter publici* Kinds.  
*officii necessitatem*; as with us the Kings Attorney, the Clerk of the  
 "Crown in the Kings Bench, who is *Capitalis Coronator Domini Regis*,  
 "which they call *Delator stationarius, fiscalis*, which with us is Honora-  
 "ry.

"The *Delator voluntarius* is with us more necessary then creditable;  
 "for great have been the complaints against them, and many and fe-  
 "vere Laws have been made against them; yet such as govern them-  
 "selves well are to be encouraged as Furtherers of the Publick  
 "Good.

- 19 El. 5. "1. Every Informer shall exhibit his Information in person, or by § 2.  
 "Attorney, and not by Deputy. Flow In-  
 "2. None shall be admitted to pursue against any person upon any formations  
 "Penal Statute, but by Information or Original Action, and not other- may be ex-  
 "wife. hibited,  
 when, and  
 by whom.

"3. Upon every such Information a Note shall be made of the Day,  
 "Moneth, and Year of the exhibiting thereof into any Office, or to any  
 "Officer, without antedating thereof, and to be accounted of Record  
 "from that time and not before.

"4. No Proceſs shall issue untill the Information be exhibited in Proceſs.  
 "form aforesaid; and upon such Proceſs shall be indorsed as well the  
 "persons Name that pursueth, as the Statute on which it is brought.

"5. The Clerk that maketh out Proceſs contrariwise shall forfeit  
 "40 s. a moiety to the Queen, the other moiety to the party against  
 "which such Proceſs is made, to be recovered in any Court of Record,  
 "&c.

"6. No Informer shall agree with the Offender before Plea pleaded,  
 "nor after, without leave from the Court.

"7. Every person (except Clerks in Court) offending against the Compositi-  
 "Act, or making any composition or taking any money, reward or pro- on.  
 "mise of reward, without consent of some of the Kings Courts at  
 "Westminster, the party convicted shall stand two hours in the Pilory  
 "in some Market next adjoyning, and be disabled to be an Informer,  
 "and forfeit 10 l. a moiety to the Queen, and the other moiety to the  
 "party grieved, to be recovered in any Court of Record.

"8. If any Informer shall willingly delay his Suit, or shall disconti-  
 "nue, or be nonsuited, or a Verdict pass against him and Judgment, he  
 "shall pay the Defendant his costs, and have usual Executions.

"But that Act shall not extend,

K k k

"1. To

" 1. To Officers of Record, who in respect of their Offices have used to exhibit Informations.

" 2. Nor to Informations upon the Statutes of Maintenance, Champerty, buying of Titles, or Embracery, as to the parties grieved.

" 3. Nor to persons to whom any Penalty or Forfeiture is given certainly, and not generally to him that will sue.

" Justices of Peace in their Sessions have Authority to hear and determine Offences against that Act. This Act was made temporary, but is made perpetual by 27 El. 10.

§ 3.  
Who may  
inform.  
County.

" No person shall be admitted to be an Informer, that by any of the 31 El. 5. Queens Courts is disabled for any misdemeanour.

" In every Informers Declaration the County shall be alledged where the Offence was done; and the Defendant may traverse the County, except in Champerty, buying of Titles, or Extortion, and Offences against 1 El. 11. & 1 El. 20. for Tonnage and Poundage, or for Usury, or for Regrating, Forestalling, or ingrossing, where the Penalty exceeds 20 l.

Time.

" Any Suit for any Offence whereof the Forfeiture is given to the King alone, shall be brought within two years after the Offence, and not after. And where the Forfeiture is given to the King and any other, within one year after the Offence. Except upon the Statute of Tallage by the party that will sue, or in his default within two years after that by the Queen. And any Suit brought otherwise is void.

" All Suits for using any unlawful Game, or not using any lawful Game, or not having Bows or Arrows, or using a Trade not having been an Apprentice, shall be heard and determined in the Sessions or Affizes of the County, &c. and not out of it.

§ 4.  
Covin.

" If any person sue with good Faith any Action Popular, and the Defendant plead a Recovery in an Action Popular in bar, or that before that time he had barred the Plaintiff in such Action, the Plaintiff may aver such Recovery or Bar was by Covin; and upon such Covin found the Plaintiff shall have Judgment, and the Defendant so attainted or condemned of Covin shall have Imprisonment for 2 years by Process of *Capias* or Outlawry, as well at the Kings Suit as any other; and the Release of the party shall not avail the Defendant.

§ 5.  
County.

" All Offences to be committed against any Penal Statute, for which any Informer or Promoter may ground any Suit, &c. before Justices of Assize, *Nisi prius*, Goal-delivery, *Oyer & Terminer*, of the Peace in their General Sessions, shall be commenced, sued, prosecuted, tried, recovered, and determined, by Action, Bill, Complaint, Information, or Indictment, before the Justices of Assize, &c. or before the Justices of Peace of the County, City, Borough, or Town Corporate and Liberty, in any the Courts Judicatures or Liberties, at the choice of the Prosecutor, and not elsewhere.

Process.

" Like Process in every Popular Action, Bill, Complaint, Information, or Suit, to be prosecuted according to the purport of this Act, be had and awarded as in Actions of Trespass *vi & armis* at the Common Law.

" Excepted, &c. all Offences for Recusancy against those that shall not frequent the Church for Champerty, Maintenance, or buying of Titles, or for transporting of Gold or Silver, Ordnance, Powder, Shot, Munition, Wool, Woolfel or Leather, or for Tonnage, Poundage, Impost, Prisage, Subsidy, &c.

" No



- 21 Jac. 4. "No Officer shall file any Information, Bill or Plaint, Count or Declaration, grounded upon any Penal Statute, which by that Act are to be tried in the proper Counties, untill the Informer hath made Oath before some Judge of the Court, that the Offences were not committed in other Counties then where the Information, &c. is laid.
- 21 Jac. 4. "The Defendent to any Information, &c. to be exhibited on the behalf of the King, or by any other, or on the behalf of the King and any other, may plead the General Issue, and give the special matter in evidence.
- Hob. 209. "Now touching Informations take these Rules: § 6. Rules.
- "1. One person cannot exhibit two Informations in the same or in several Courts; if he do, the Defendent may plead the first in bar of the second.
- Hob. 128. "2. If two Informers exhibit Informations against the same person, for the same Offence on the same day, they are both void, and they may be pleaded the one in bar of the other; for as much as there is no right of Priority.
- "3. Informations and Suits on Penal Statutes are *stricti juris*, and excepted out of all the Statutes of Jeofails.
- "4. The Statute of 21 Jac. 4. gives not Jurisdiction to Justices of Peace where they had none before; but onely appoints, that where Informations might have been brought in the Courts at *Westminster*, and before Justices of Peace, they shall now be brought before Justices of Peace onely. *Farington, Trin. 4 Car. Cro. Greens case, Mich. Car. 1. Cro.*
- "5. The Statute of 31 El. 5. extends not to an Action or Information by the party grieved; for he may bring it in any County. *Allens case Mich. 40 El. Cro. 645.*
- "6. If Jurisdiction be given to the Sessions to hear and determine, and doth not say by Information, this shall be by Indictment and not Information. *Fones Rep. p. 133.*
- "7. Where the Suit is directed to be in any Court of Record, or in any the Kings Courts of Record, that is intended the Courts at *Westminster*. *Fones Rep. 193.*
- "8. Where an Information *tam pro Dom' Rege quam pro seipso*, if the Informer die, yet the Attorney General may prosecute for the King; and although the use is that the Attorney General onely joyn the Issue, yet he cannot hinder the Prosecutor for his part. 3 Inst. cap. Informers.

*Maior or Magistrate, where he may act as a Justice of Peace by some particular Statutes. CHAP. CXCI.*

- 14 Car. 2. "The next Magistrate may commit to prison untill next Sessions such Customs; C. 11. Parl. as shall abuse an Officer of the Customs.
2. "Maior or chief Magistrate of any City or Town Corporate may Preachers; C. 14. Parl. commit any preaching a Sermon or Lecture disabled by the Act so to do.
- 13 & 14 "Maior or chief Officers of Corporations may bind over persons Quakers; Car. 2. c. 1 meeting as Quakers, or refusing an Oath in order to conviction. Parl. 1.
- 13 Car. 2. "Maior or chief Officer may convict any of neglect of sending Carriages; c. 8. riages for the Kings use.

Custom.	"The chief Magistrate of the Port or place next adjoining may (upon complaint) grant a Warrant to search for uncustomed Goods.	12 Car. 2. C. 19.
Alehouses.	"Maiors and Head Officers may convict unlicensed Alehouse-keepers, and levy the Penalties.	3 Car. 1. C. 3.
Sunday.	"The Maior or Head Officer may put in execution the Statute of 3 Car. 1. c. 1. for breach of Sunday.	3 Car. 1. C. 1.
Swearing.	"The Maior, &c. may punish Offenders by profane Swearing or Cursing.	1 Jac. 9. 21 Jac. 6. 20.
Armor.	"Maior and Bailiffs of Cities and Boroughs may execute the Statute against riding armed.	2 E. 3. 3.
Dying.	"Maior or Head Officer may seize and burn Logwood, <i>alias</i> Blockwood.	23 El. 9.
Beer.	"Maiors, &c. in Corporations may assess the prices of Ale and Beer.	23 H. 8. 4.
Games.	"Maiors, &c. may commit persons they find playing at unlawful Games.	33 H. 8. 9.
Weights.	"Maiors, &c. may punish Offenders touching false Weights.	11 H. 7. 6.
	"Chief Magistrates may punish such as oppose the collecting of Hearth-money.	4. 16 Car. 2. C. 3.
Servants.	"Maiors and Head Officers may hear and determine matters touching Servants and Apprentices.	5 El. 4.
	"The Maior and Head Officers may inquire of Offences against 1 El. 2.	1 El. 2.
Plague.	"Maiors, &c. may make a Tax for relief of persons and places visited with the Plague.	1 Jac. 31.
Wood.	"Maiors, &c. and Head Officers may inspect and assess the assize of Talewood, Billet and Faggot.	43 El. 14.
Orchards.	"Maiors, &c. may punish the Offenders against 43 El. 7. for robbing Orchards, &c.	43 El. 7.
Arrow-heads.	"Maiors and Sheriffs Bailiffs, and Officers of Towns, may inquire of Offences touching Arrowheads.	7 H. 4. 7.
Artificers.	"Maiors, Bailiffs, &c. may inquire of Offences of Artificers and Vintners.	2 E. 6. 15.
Vessels.	"Maiors, Bailiffs, and Head Officers may assess the prices of Beer Vessels.	8 El. 9. 23 H. 8. 4.
Vessels.	"Maiors, Bailiffs, and Governours of Cities, Towns, and Markets, may search and gauge all Vessels for Salmon, Herrings, and Eels.	11 H. 7. 23. 22 E. 4. 2.
Souldiers.	"Maiors, Bailiffs, and Ministers of the Port, &c. may arrest Souldiers departing without licence.	18 H. 6. 19.
Leather.	"Maiors, Bailiffs, &c. may hear and determine matters touching Leather, and examine, &c.	1 Jac. 22.

## Process. CHAP. CXCH. V. 132.

THE Forms of Process upon Indictments of Trespas, which also the Justices of Peace out of their Sessions may in some few cases make out against Offenders.

Note, that as the Authority of making Process upon Indictments is given by express words in the Commission to the Justices of Peace in their Sessions; so is it given by express words in some Statutes to the Justices of the Peace (yea to one Justice of the Peace) out of their Sessions, to make out Process upon Indictments found (before them) against Offenders, or upon Information against them, as if they were indicted of Trespas in Sessions, as you may see here *tit. Forcible Entry, & tit. Sheriff's antea.*

Also

Lam. 317.  
501. Also in other cases, and by some other Statutes, this Authority of making out Process (against Offenders) by the Justices of Peace out of their Sessions seemeth to be implied of congruence, or rather of necessity: as where any Statute doth give Power or Authority to the Justices or Justice of Peace out of their Sessions to inquire, hear, and determine, (as *hic tit. Riots, tit. Transportation, tit. Tyle, et tit. Weights*;) in these and in all other such cases, where the Justices may inquire, hear, and determine there, after Indictment or Presentment of the Offence, the said Justices may make out Process against such Offenders, to cause the Offenders to come and answer; for unless the Offenders do come in, either *gratis* or by Process, the Justices cannot proceed to hear and determine. Again, in the former cases of Transportation, Tyle, and Weights, as also in all other cases where any Statute doth give power to the Justices of Peace out of their Sessions to hear and determine, either upon the Confession of the Offenders, or upon Examination of the Witnesses, (whereof see *antea tit. Hear and Determine, &c.* See 5 *E. 6. 14.* against Forestallers;) in all such cases it seemeth the Justices of Peace may grant out their Process or Warrant against such Offenders, to appear before them, to answer to their said Offences; and thereupon may proceed to examine, hear, and determine the Offence, as being convicted thereof upon such Confession or Examination, without any Indictment or Process.

The difference between Process and the Precept or Warrant of the Justices of Peace seems to be this:

The Precept or Warrant of the Justice is onely to attach and convene the party before any Indictment or Conviction, and may be made either in the Name of the King or of the Justice, as is before shewed.

Process is always in the Name of the King, and usually after an Indictment found, or after other Conviction.

*Now these Processes seem to be as followeth.*

27 El. 12. "The Justices of Peace for the Offences mentioned in 27 *El. 12.* for Sheriffs, &c. not taking the Oaths upon Conviction, may award

"Execution for the Forfeitures by *Fi. fa.* Attachment, *Capias*, or Extent.

4 & 5 P.  
& M. 3. "Process upon 4 & 5 *P. & M. 3.* touching Souldiers, &c. shall be as

"upon Indictments of Trespas at Common Law.

1 E. 6. 1. "The Justices of Peace before whom any person shall be indicted for

"depraving or speaking irreverently of the Sacrament, contrary to 1 *E.*

"6. 1. may award two *Capias* and an Exigent, as well into the County

"where the party is indicted, as into any other County.

First, if the Offender be absent, a *Venire fac* shall be awarded by the Justice or Justices of Peace under his or their own *Teste*. And if thereupon the Offender be returned sufficient, (and maketh a Default) then *Distringas* is awarded, which *Distringas* shall go forth *infinite* till the Offender come in. But if a *Nihil habet, &c.* be at the first returned, then after the *Venire fac* a *Capias*, then an *Aliàs*, and after a *Pluries*, shall go forth, and after that an *Exigent*, till the party be taken, or yield himself, or else be outlawed.

And these are the ordinary Processes upon all Indictments of Trespas against the Peace, or of other Offences against Penal Statutes, not being Felony, or a greater Offence, (if it be not otherwise ordained by Statute.) But the Process is commonly grounded upon an Indictment, and is only to cause the Offender to come in, and to make his Answer; and therefore if the Offender be present, and confess such Indictment, Information,



or Offence, then needeth there no Process at all, for he shall be forthwith committed to Prison (commonly,) there to remain untill he hath paid his Fine, or given Surety for it. 1 H.7.20. & Br. Imp. 100.

Also these Processes shall be always directed to the Sheriff, (who is the immediate Minister and Officer of the King to execute all Process) except the Sheriff himself or his Officers be parties: but if the Justice of Peace be to grant out Process against the Sheriff, Under Sheriff, or their Officers, offending contrary to the Statute 8 H.6.c.9. or 11 H.7.c.15. which you may see here before, it seemeth such Process shall be directed to the Coroners of the County, and shall be served by them. And so are divers Books, as 2 H.6.12. 8 H.6.30. 9 H.6.11. & 18 Ed.4.7. and others. And so also the Oath of the Justices of Peace seemeth to bind them.

Note also, that this Process ought always to be made in the Name of the King: and for that the King is party, it must be with a *Non omittas* <sup>Br. Franc. 18.</sup> *propter aliquam libertatem, &c.* But the *Teste* thereof may be under the Name of the Justice of Peace.

If the Offender be within any Liberty or Franchise, the Sheriff is to enter the Franchise, and to execute the Process himself, (and not to write to the Bailiff of the Franchise because the King is a party.) See 41 Ass. 17. Br. Franch. 18.31.

The Forms of these Processes to be made by the Justice of Peace out of the Sessions seem to be as followeth.

The *Venire facias* thus.

**C**AROLUS, Dei gratiâ, Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, Fidei Defensor, &c. Vic' Com' Cantabr' salut. *Præcipimus tibi quòd non omittas propter aliquam libertat' in balliva tua, quin venire fac' A.B. de D. in dicto Com' tuo Teoman, coram R. M. Mil' & D. M. Armig. duobus Justic' nostr' ad Pacem conservand. necnon ad diversas Felon' Transgr' & alia malefacta in dicto Com' perpetrata audiend' & terminand' assignatis, apud Linton in Com' tuo, 20 die Martii prox' futur. ad respond' nobis super quibusd' articulis versus ipsum A.B. presentatis. Et habeas ibi tunc hoc Præceptum. Teste R.M. & M.D. apud Linton 30 die, &c.*

The *Distingas* thus.

**C**AROLUS, Dei gratiâ, Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, Fidei Defensor, &c. Vic' Com' Cantabr' salut. *Præcipimus tibi quòd non omittas propter aliquam libertat' in balliva tua, quin eam ingrediaris, & distingas A.B. de D. in Com' tuo Teoman, per omnia terras & tenementa, &c. Et quòd de exitibus eor' respondeas, &c. Et quòd habeas corpus ejus coram, &c. Justic. &c. ad respond. &c. Teste, &c.*

The *Writ of Capias* thus.

**C**AROLUS, Dei gratiâ, Angliæ, &c. Vic' Com' Cantabr' salut. *Præcipimus tibi quòd non omittas propter aliquam libertat' in Balliva tua quin eam ingred. & capias J.D. de A. in Com' tuo Teoman, &c. si invent' fuerit in Balliva tua, & eum salvò custod' fac. ita quòd habeas corpus ejus coram R.M. Mil' & M.D. Arm. duobus Just' nostris ad Pacem conservand. necnon ad diversas Felon' Transgr' & alia malefacta in eodem Com' tuo perpetrat' audiend' & terminand' assign. apud L. in Com' tuo, 20 die Martis prox' futur', ad*

re-

*respond' nobis de diversis Transgr' Contempt' & Offensis, de quibus ipse indi-  
ctat' existit. Et habeas ibi tunc hoc Breve. Teste R.M. & M.D. apud Lin-  
ton sexto die Jan. &c. anno regni nostri, &c.*

*Ad quem diem Willielmus Wendy Mil' Vic' Com' praed' retorn. quod ipse  
non est invent' in Balliva sua, & ipse non venit. Ideo praecept' est sicut alias, &c.*

The *Alias Capias*.

**C**AROLUS, &c. Vic. &c. *Pracipimus tibi sicut alias tibi praecepimus,  
quod non omittas, &c. (Verbatim ut supra.)*

*Ad quem diem, &c. (ut supra) et ipse non venit. Ideo praecept' est Vic' sicut  
pluries, &c.*

The party may appear *gratis*, and so avoid the Attachment or Arrest-  
ing of his Body; and that is the cause that the Entry is, *Et ipse non venit*.

The *Pluries Capias*.

**C**AROLUS, &c. Vic. &c. *salut. Pracipimus tibi sicut pluries tibi pra-  
cepimus, quod non omittas, &c. (ut supra.)*

*Ad quem diem Willielmus Wendy Mil' Vic' Com' praed' retorn. quod  
praed' E.F. non est invent' in, &c. et ipse non venit. Ideo praecept' est, quod  
exigi fac. &c.*

The *Exigent*.

**C**AROLUS, &c. Vic. &c. *salut. Pracipimus quod exigi fac' E.F. de  
A. in Com' tuo Teoman, quousque secundum legem et consuetudinem regni  
nostri Angliæ utlagatur, si non comparuerit, et si compar. tunc eum capias, et  
salvò custod' fac. ita quod habeas corpus ejus coram R.M. Mil. et M.D. duobus  
fuss' ad Pacem nostram conservand. necnon ad diversis Felon' Transgr' et  
alia malefacta in eodem Com' tuo perpetrata audiend' et terminand' assign. apud  
L. in Com' tuo, 30 die Sept' prox' futur. ad respond' nobis de diversis Transgr'  
Contempt' et Offensis, de quibus ipse indiçtat' existit. Et habeas ibi tunc hoc  
Breve. Teste R.M. et M.D. apud L. 8 die Sept' anno regni nostri, &c.*

*Ad quem diem Willielmus Wendy Mil' Vic' Com' praed' retorn. quod ad  
Com' tent' apud Cantabr' 20 die Aug. anno regni Dom' Regis nunc, &c. et sic  
ad quatuor alios Com' tunc prox' sequent' ibid' tent. praed' E.F. exactus fuit,  
et non comparuit. Ideo utlagat' fuit.*

Lam. 503. These Processes are sent out, to the end that either the party shall  
come or be brought in to make his Answer, and to be justified by the  
Law; or else that for his contumacy he shall be outlawed, and so be  
deprived of the benefit of the Law. But the Power of the Justices of  
Peace endeth with the Utlary, for they can make no *Capias Utlagatum*, but  
must certifie the Utlary into the Kings Bench.

Lam. 500. Also all such Processes (as well of *Capias*, &c. as of Utlary) may be staid  
by a *Superfedeas* issuing from other Justices of Peace (out of Sessions) te-  
stifying that the party hath come before them, and hath found Sureties  
for his Appearance to answer to the Indictment, or to pay his Fine, &c.  
See before.

The Com- Note, that this Authority of the Justices of Peace in sending out  
missions, these Processes (being out of their Sessions) is beyond the bounds of their  
14 H. 7. 8. Commission. And again, by the Commission one Justice of Peace alone  
Br. P. 6. 7.

cannot grant a *Capias*, nor other Process, but two Justices of Peace at the least must do it, and that sitting the Court, and in their Sessions; and yet nevertheless in these former cases the Statutes (expressly, or by necessary implication) giving such Authority to the Justices of Peace, or to one Justice alone, and that out of the Sessions, are sufficient Warrant and Commission to the Justices of Peace therein, as it seemeth.

Traverse. CHAP. CXCIII. V. 133.

**A**fter that such Process (or other Process *ad respond.*) is awarded against the party, it seems he may come in and yield himself to pay his Fine: or else he may offer his Traverse to the Indictment found against him before the Justices of Peace, and the Justices ought to allow him his Traverse against it; which Traverse is to take issue upon the chief matters of the Indictment, or to deny the point of the Indictment. The formal words of the Traverse are in Latine, *Abſque hoc, &c.* Lam. 325

But although the Justices of Peace have power in divers cases as aforeſaid, (out of their general Sessions) to take Indictments, and after such Indictments found to award a Process *ad respondendum* against Offenders, and to hear and determine thereof; and the Offenders also have liberty to come in and to speak, and may answer for themselves, and may offer their Traverse, and that the Justices of Peace are to allow of and to receive them. Yet *quare* whether the Justices of Peace out of their general Sessions may try such Traverse being tendred to them, ("except in cases of Riots and Forcible Entries) without which trial all the rest may seem idle. (*Vide hic.*) Or upon the Traverse tendred they must certifie or send the Inquisition of the Indictment so found before them in the Kings Bench, or unto their Quarter or General Sessions of the Peace, there to be tried and determined. Howsoever it is safest in all cases (after such Traverse tendred) to certifie or deliver such Inquisition or Indictment into the Kings Bench, or to their next Quarter Sessions, and so to refer the trial of the Traverse, and farther proceedings therein, to them. See hereof *tit. Riot et Forcible Entry*. See Lam. 522, 523. & hic cap.

Certiorari. CHAP. CXCV. V. 134.

**T**he Return of a *Certiorari* sent to remove an Indictment may be thus: First, upon the backside of the Writ of *Certiorari* indorse these or the like words;

*Executio istius Brevis patet in quadam Scheda eidem Brevi annexata.*

And that Schedule may be thus;

*Canabr.*

**E**Go Michael Dalton, unus Custod' Pacis ac Just' Dom' Regis ad Pacem in dict' Com' Cantabr' conservand. necnon ad diversas Felon' Transgr' et alia malefacta in eodem Com' perpetrata audiend' et terminand' assign. virtute istius Brevis mihi deliberati, indictamentum illud (unde in dicto Brevis fit mentio) una cum omnibus indictamentum tangentibus, in Cancellar' dicti Dom' Regis distincte et aperte sub sigillo meo certifico. In cujus rei testimonium ego pref. M.D. his presentibus sigillum meum apposui. Datum apud W. 2 die mensis Aug. anno regni, &c.

Then



Then take the Record of the Indictment, and close it within the Schedule, and seal and send them up both together with the *Certiorari*.

Now to shew what is farther meet for the Justice of Peace to know concerning this Writ of *Certiorari*, and their Certifying or Return thereof.

After an Indictment found before Justices of Peace, a *Certiorari* is procured by the means of some parry indicted or grieved, thereby to remove such Indictment from the said Justices, and to convey it to Justices of a higher Authority, to the end the party may either traverse such Indictment above, or may there avoid it for insufficiency of form or matter.

Hob. 135. "Although the *Custos Rotulorum* keep the Records, yet must the Justices return the *Certiorari*, for the Writ is directed to them, and not to him; and the Record it self must be returned, and not *Tenor Record*.

Fitz. 245. a And this *Certiorari* is the Kings Writ, issuing sometimes out of the Chancery, and sometimes out of the Kings Bench, and may be directed to any inferiour Court of Record, or Officer of Record, (as to a Justice of Peace, Sheriff, Coroner, or Escheator) to be certified of any Record which is before any of them. And first an *Aliàs*, then a *Pluries*, and lastly an *Attachment* lieth against them that should send it, (if the Record be not certified accordingly.) Or it seemeth a *Sub pana* is used at this day.

If it be returnable into the Chancery, then are the words, *In our Chancery*; and if into the Kings Bench, then the words are, *Nobis mittatis*; and if into the Court of Common Pleas, then *Coram Justis nostris de Banco*.

"This Writ is not to be slighted, nor are any Proceedings to be after the delivery thereof, although the Return be past; for by the delivery the hands of the Justices are closed. A Forcible Entry was found, and Restitution awarded but not executed. A Writ of *Certiorari* comes to a Justice of Peace, and he refuses to open it till he had spoke with his Companions. Restitution was given in the Kings Bench, and Restitution prayed and granted, and the Justice of Peace much chid. *Telv. 32.*

Plo. 393. The *Certiorari* may be sometimes to remove and send up the Record it self, and sometimes but onely the Tenor of the Record, (as the words therein be) and it must be obeyed accordingly.

Fitz. 245. b. If there be variance between the *Certiorari* and the Record which is to be removed, the Justices need not to certify such Record. *Lam. 500.*

Cro. 130. a. & 133. b. A Justice of Peace may deliver or send into the Kings Bench an Indictment found before him, or a Recognizance of the Peace taken by him, or a Force recorded by him, without any *Certiorari*: but if a Justice of Peace having a Record in his hands be discharged of his Office, now he cannot certify it without a *Certiorari*, although he be made a Justice of Peace again. See 8 *H. 4. f. 5. Br. Record. 64.*

6 Ed. 4. 5. If a *Certiorari* be to send up the Indictment of *A*, in which Indictment some others be indicted with the same *A*, yet need not the Justice of Peace to make Certificate concerning any but *A*. For although they be named joyntly, yet be they indicted severally, and the King may pardon *A* without forgiving the other. 6 *Ed. 4. 5.*

6 H. 7. 16. Br. Jud. 17. If a *Certiorari* shall come to the Justices of the Peace to remove an Indictment, and the party sueth not to have it removed, but suffereth it to lie still after the day of the Return of the *Certiorari*; yet it seemeth the Justices of Peace ought *ex officio* to send it away, because the Writ containeth in it self a Commandment to them so to do; and so is a

*Su.*

*Superfedeas* of it self to the Justices of Peace to stay their Proceedings.  
See *antea tit. Forcible Entry*.

And yet by others the Justices may proceed upon the Indictment:  
*Vide Cromp. 132, 133. & 166. Dyer 245.*

And albeit the *Certiorari* be a *Superfedeas* of it self, yet may the party upon the *Certiorari* purchased have a *Superfedeas* also directed to the Sheriff, commanding him that he arrest him not upon that Record before the Justices of Peace. *Fitz. f. 237.* In which place also he doubteth whether the Justices of Peace themselves ought not of duty to award their own *Superfedeas* to the same effect, after that the Writ of *Certiorari* is brought to their hands. Lam. 497.  
F.N.B.  
237.c.

If a *Certiorari* come to the Justices of Peace to remove an Indictment, and in truth the Indictment was not taken till after the date of that *Certiorari*; yet if the Indictment be removed thereby it is good enough, for that they be both the Kings Courts, (1 R. 3. 4.) and in such a case it is now usual to remove it. *Vide Fitz. 71. d.* Lam. 438.

But all Writs of *Certiorari* being to remove any Indictment of Forcible Entries, or Riot, or of Assault and Battery, found before the Justices of Peace, shall now be delivered at some Quarter Sessions of the Peace in open Court, &c. 21 *Fac. c. 8.* See *hic antea tit. Forcible Entry*. "And the persons so prosecuting the same shall (before the Allowance thereof) become bound unto the Prosecutor in 10 l. Bond with Sureties, as the Justices shall think fit, with Condition to pay the Prosecutor (within one moneth after Conviction) such reasonable Costs and Damages, as the Justices of the Peace of the County (where the Bill shall be found) shall assess and allow; and in default thereof the Justices may proceed."

All the higher Courts at *Westminster* may write to the Justices of Peace, to certify their Records that do make for the trial of Causes depending in them, as you may read 19 *H. 6. 19.* where they of the Common Pleas did send to the Justices of Peace for an Indictment, because in a Writ of Conspiracy (brought or depending before them) it was material to have it. Lam. 501.

In some cases the Justices of Peace may certify a Record (by him made or found before him out of Sessions) without any Writ of *Certiorari* therefore to him directed. *Vide antea tit. Forcible Entry*.

In other cases he must of duty certify his Proceedings, but may spare to certify the Record, untill a *Certiorari* come to him for it. See hereof *antea tit. Surety for the Peace*.

For the manner of the Writ of *Certiorari* to remove Records from one Court to another, or from the Justices of Peace, or other Officers of Record, to any the higher Courts at *Westminster*, &c. there are divers forms and sorts thereof, as you may see in *F.N.B. 242. &c.*

I will onely set you down here one Form for all, and so conclude.

The Form of *Certiorari* out of the Chancery to certify a Recognizance taken by a Justice of Peace in the County for the keeping of the Peace, &c.

CAROLUS, Dei gratiâ, Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, F.N.B. 18  
Fidei Defensor, &c. Custodibus Pacis nostri in Com' Cantab. et eorum c. Cromp.  
cuilibet salut. Volentes certis de causis *Certiorari* super tenorem cujusdam Se- 148.  
curitatis Pacis, (vel Boni gestus) quam A. P. Armiger nuper invenit coram  
vobis, vel aliquo vestrum, de eo quod ipse dampnum vel malum aliquod R. S.  
aut

*aut alicui alio de populo nostro, de corpore suo nec faceret, nec fieri procuraret quovis modo; vobis mandamus, quod tenorem in Securitatis Pacis (sive Boni gestus) predict. nobis in Cancellar. nostr. in Octabis Purificat. Beatae Mariae prox. futur. ubicunque tunc fuer, sub sigill. vestr. vel unius vestrum distincte et aperte sine dilatione mittatis: Et hoc sub pena centum libr. nullatenus omitatis, nec aliquis vestrum omitat. Teste meipso apud Westm. 28 die Nov. anno regni nostri sexto.*

The Return hereof see *antea*, tit. *Surety for the Peace*.

But if the *Certiorari* be with these words, We command that you send all and singular the Recognizances aforesaid, with all matters concerning the same, as fully and wholly as before you, &c. they were late taken, &c. Here the Justice of Peace, together with the Recognizance, must certify and send his Examinations taken, or the Warrant whereby the party was brought before him to find such Surety, and such other matter or cause as he knoweth why such Surety was required against the party; that so the Court above may proceed against the party (if cause be required) according to Law and Justice. And the Certificate may be thus.

**I** *M.D.* one of the Justices of the Peace in the County of *Cambridge*, do certify His Majesty in His Court of Chancery (or Kings Bench,) That I by virtue of a certain Warrant (the Tenour of which is hereunder written) did compel *R.C.* in the same Writ named, to find Surety according to the form of the said Warrant. And I the said *M.D.* by virtue of the said Writ, the said Recognizance in the said Writ mentioned, and all things touching the same, to His Majesty (under my Seal) do hereby distinctly send, as in the said Writ is of me required. In witness whereof, &c.

The Tenour of the above mentioned Warrant followeth. Then underneath write the Warrant, &c. *verbatim*.

*Nota, quod Record nō serra remove mes per Certiorari, ou Corpus cum causa. Fitz. Record. 3.*

Note also, that upon a *Certiorari* to remove an Indictment of a Riot or Forcible Entry, &c. the Return must have these words, *Necnon ad diversas Felonias*, &c. For if the Return mentions onely that they are Justices of the Peace, without the former words, *Necnon ad diversas Felonias, Transgressiones, et alia malefacta*, &c. according to the Commission, the Return is insufficient. 12 *H. 7. 25.* 2 *R. 3. 9.* *Br. Indictment* 32, 50.

Also note, that no *Certiorari* shall be granted to remove any Recognizance, except the same Writ be signified with the proper Hand of the Chief Justice, or (in his absence) of one of the Justices of that Court out of which the said Writ shall be awarded or made. 1 & 2 *P. & M. c. 14.*

*D E U S*

*Minimis Magnus.*

*F I N I S.*



The first part of the book is devoted to a general survey of the history of the world from the beginning of time to the present day. It is a comprehensive and well-written work, and it is one of the best of its kind. It is a book that every student of history should read, and it is a book that every citizen should read.

The second part of the book is devoted to a detailed study of the history of the United States. It is a book that is both interesting and informative, and it is one of the best of its kind. It is a book that every student of American history should read, and it is a book that every citizen should read.

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# A D D E N D A.

*At the end of Chap. 38. adde this.*

**W** High Additional Duty of Excise granted by 22 & 23 § 42.  
*Car. 2.* being granted for 6 Years onely, and being to expire the 24th day of *June* 1677. by another Act of 29 *Car. 2.* the same Duty is charged upon Beer, Ale, Cider, &c. to continue for 3 Years, from the 24th of *June* 1677. to be levied by such rules, ways, and means, and under such Penalties as are provided by 22 & 23 *Car. 2.* with this addition.  
 “1. That every Gauger shall at the time of Gauging leave with the party or his Servants a note of the Gauge, with the day of the moneth, and how many Gallons according to the Ale Quart remaining in the Exchequer such person is charged with.

*At the end of Chap. 101. adde this.*

“And by one Act made 22 & 23 *Car. 2.* Beer may be transported, paying 12 *d. per Tun* onely, which Act is by 29 *Car. 2.* touching the Additional Excise continued untill the end of the first Session of the next Parliament.

*At the end of Chap. 86. follows this.*

- 29 *Car. 2.* “If any person of the age of 14 years or above, shall on the Lords Day, § 7.  
 “or any part thereof, do or exercise any worldly labour, business, or *Working.*  
 “work of his ordinary calling (except works of necessity and charity)  
 “he shall forfeit 5 *s.* for every offence.
- Ibid.* “No person shall cry, shew forth, or put to sale any Wares, Fruit, § 8.  
 “Herbs, Goods or Chattels (except Milk before 9 in the morning *Selling.*  
 “and after 4 in the afternoon) upon pain to forfeit the same.
- Ibid.* “No Drover, Horsecourser, Waggoner, Butcher, Higler, or any their § 9.  
 “servants, shall travel or come to their Inn or Lodging on the Lords *Travelling*  
 “Day, or any part thereof, upon pain that each Offender forfeit 20 *s.*  
 “for every offence.
- Ibid.* “No person shall use, imploy, or travel upon the Lords Day with any § 10.  
 “Boat, Wherry, Liter, or Barge, (except upon extraordinary occasion, *Watermen.*  
 “to be allowed by some Justice of Peace or Head Officer of the County or place where the offence is committed) upon pain to lose 5 *s.* for every offence.
- Ibid.* “The Conviction must be before any Justice of the County or § 11.  
 “Town, or chief Officer by view, confession, or proof of one or more *Conviction*  
 “Witnesses, who shall give warrant under hand and seal to the Constables or Churchwardens of the Parish or Parishes where the offence is committed, to seize and sell the Goods shewed, and to levy the Forfeitures by distress and sale, rendering the Overplus, and in case of want of distress, or insufficiency, or inability to pay, the party to be put in the stocks 2 hours.
- Ibid.* “Out of the Forfeitures the Justices, Maior, or Head Officer may re- § 12.  
 “ward any persons informing, so as the reward exceeds not one third *Reward.*  
 “of the Penalties.

## Addenda.

- Extent.* "The Act not to extend to dressing of meat in private Families, nor  
"in Inns, Cooks shops, or Victualling Houses for such as cannot other-  
"wise be provided for. 29 Car.2.
- Impeach-  
ment.* "No person to be impeached thereupon, unless presented for the  
"same within ten days after the offence.
- § 13. "If any person travel on the Sunday, and be robbed, the Hundred  
*Robbery.* "shall not be chargeable to him; but in default of Hue and Cry made  
"shall be chargeable to the King, for so much as might have been reco-  
"vered against them.
- § 14. "If any person on the Lords Day serve or execute, or cause, &c. any  
*Arrest.* "Writ, Process, Warrant, Order, Judgment, or Decree, (except in cases  
"of Treason, Felony, or breach of the Peace) such service shall be void,  
"and the party liable for damages, as if no such Writ, &c. had never  
"been made.

A



A Catalogue or Particular of such Statutes as Justices of Peace are named in, or whereby any Authority or Jurisdiction is given to them, with reference to the Chapters in this Book where they are abridged.

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- 2 E.3.3. *No man shall come before the Justices, or go or ride armed, c.9.*
- 4 E.3.2. *The Authority of Justices, &c. of the Peace, c.4.*
- 18 E.3.2. *Justices of Peace and their Authority, c.3,4.*
- 34 E.3.1. *Justices of Peace and their Authority.*
- 36 E.3.12. *At what times the 4 Sessions of Justices of Peace shall be holden, c.4.*
- 41 E.3.4. *Commissions of Inquiry to whom to be made, c.4, 146.*
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- 13 R.2.7. *What sort of persons shall be Justices of Peace, and what their charge is to see, c.3,4.*
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- 14 R.2.11. *The number of Justices and their Wages, c.4, 186.*
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- 17 R.2.c.9. *The Justices of Peace shall be Conservators of the Statutes touching Salmons, c.42.*
- 4 H.4.3. *Touching Watches, c.104.*
- 5 H.4.10. *Touching Imprisonment, c.171.*
- 7 H.4.3. *Touching Estreats, c.37.*
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  - c.1. *Justices their sufficiency, c.4.*
- Parl.2. 2 H.5.7. *Touching falsifying of Money, c.140.*
- 2 H.6.11. *The measures of Wine, Eels, Herrings, and Salmon, c.112.*
- 8 H.6.5. *Touching Weights, ib.*
  - c.7. *Touching Forcible Entry and Detainer, c.44, 125, 126.*
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- 10 H.6.6. *Touching Process upon Indictments, c.194.*
- 11 H.6.6. *Touching Discontinuance of Process.*
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  - c.12. *Touching Wax, c.106.*
- 14 H.6.4. *Touching Sessions in Middlesex, c.186.*
- 18 H.6.11. *Of what sufficiency in Lands a Justice of Peace ought to be, c.4.*
- 20 H.6.19. *Touching Souldiers, c.94.*
- 23 H.6.10. *Touching Sheriffs, c.90.*

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- 33 H.6.10. *Touching Attorneys in Norfolk.*
- 3 E.4.2. *Touching Sheriffs Turns, c.90.*
- 4 E.4.1. *Touching Cloth, c.24.*
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Soli Deo Gloria.

D E U S

Minimis Magnus.

F I N I S.

